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BEFORE THE PHILADELPHIA PARKING AUTHORITY

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In re: Philadelphia Taxicab and Limousine Regulations : Docket No. PRM – 10-001

COMMENTS

Michael S. Henry, Esquire, on behalf of Germantown Cab Company, Bucks County Services, Inc., Rosemont Cab Company, Executive Transportation, Inc., t/a Luxury Sedan, and McQ Enterprises, Inc., t/a Yellow Cab, hereby submits his comments on the proposed regulations of the Philadelphia Parking Authority.

MY BACKGROUND AND EXPERIENCE

I am an attorney who has been licensed to practice law in the Commonwealth of Pennsylvania since 1987. I have been involved in the regulatory affairs of the Philadelphia taxicab and limousine industry for my entire legal career. In 1990, I successfully represented taxicab owners who could not obtain their medallions from the Pennsylvania Public Utility Commission ("Commission") before the deadline established by the Medallion Act by obtaining an injunction from the Commonwealth Court to extend the deadline. I filed extensive comments to the proposed medallion taxicab regulations promulgated by the Commission in the early 1990's and cooperated with the Independent Regulatory Review Act ("IRRC") to help resolve the Commission's rulemaking proceeding. I represented medallion taxicabs before the Commission in the last major rate case shortly after the Medallion Act was implemented. I was also responsible for the day to day operations of the wind-up of the Philadelphia Taxicab Self-Insurance Program ("PATSIP") after it became insolvent.

More recently, I have been involved in litigation against the Philadelphia Parking Authority ("Authority"). I represented taxicab owners, drivers and dispatch companies in Blount v. Philadelphia Parking Authority, 992 A.2d 215 (Pa. 2009), in which the Supreme Court determined that the Authority is a Commonwealth agency for the purpose of regulating taxicabs and limousines and is subject to the original jurisdiction of the Commonwealth Court. I represented a non-medallion taxicab company in Germantown Cab Company v. Philadelphia Parking Authority, 993 A.2d 933 (Pa.Cmnwlth.Ct. 2010), in which the Commonwealth Court found that the Authority is subject to the same statutory rulemaking procedures as other Commonwealth agencies and that the regulations it adopted without following these statutory rulemaking procedures were invalid and unenforceable as a matter of law. As a consequence of the Germantown decision, the Authority was forced to institute this rulemaking proceeding.

Currently, I am representing members of the taxicab and limousine industry against the Authority in an attempt to enforce a provision of the Regulatory Review Act that requires the Authority to provide estimates of the direct and indirect costs to the private sector of compliance

with proposed regulations. The Authority's proposed regulations will have an enormous economic impact on the taxicab and limousine industry. But the Authority has not provided this information IRRC as required by the act. In fact, the Authority has purposefully and intentionally misrepresented the true cost of its proposed regulation by comparing them to the regulations found to be invalid in the Germantown case. Finally, I am also representing a group of taxicab companies to put an end to the Authority's illegal vehicle impoundment practices.

My purpose in pursuing these lawsuits and in filing these Comments is not to obstruct the Authority's lawful exercise of regulatory power over the taxicab and limousine industry or its legislatively mandated mission to improve transportation service in Philadelphia. My goal is to put an end to the abusive practices the Authority has implemented over the past five years, which are hurting, rather than improving, the quality of service the taxicab and limousine industry provides and which will continue to hurt the industry if these proposed regulations are adopted.

The measure of a good administrative agency is respect for the rule of law. An agency must understand the limits of its power. Whenever an agency undertakes any action, it should first consider whether it is authorized to act and, if there is a question whether it has authority to act, it should consider other options. An agency should always consider the rights of those affected by its action. These rights are incorporated into the Constitution of the United States and the Constitution of the Commonwealth. A good administrative agency should always choose the most reasonable and least burdensome action and apply its standards with consistency and fairness.

Ideally, a rulemaking process is designed to produce understandable, reasoned, public statements of a method of operation chosen by the Authority that will ensure fairness in pursuing its responsibility to execute the laws enacted by the legislature. In addition, regulations must be consistent with the Constitution of the United States, the Constitution of the Commonwealth, the Authority's enabling act, and other laws. The purpose of the rulemaking process is to protect against the unwise or improper exercise of administrative discretion. By providing members of the regulated industry with an opportunity for democratic participation in the formulation of standards governing their conduct, the rulemaking process increases the likelihood of the Authority's responsiveness to its needs and concerns.

To that end it is helpful to remind ourselves of the General Assembly's intent when it enacted statutory rulemaking procedures for Commonwealth agencies. Section 745.2(a) of the Regulatory Review Act, 71 P.S. §§745.2(a) expresses that intent as follows:

> "The General Assembly has enacted a large number of statutes and has conferred on boards, commissions, departments and agencies within the executive branch of government the authority to adopt rules and regulations to implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must establish a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power in order to curtail excessive regulation and to require the

executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function; to provide ultimate review of regulations by the General Assembly; and to assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions. To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency."

In what follows, we raise a number of substantive objections to the Authority's proposed regulations. In order to resolve these objections, the Authority will have to make significant revisions to its proposed regulations and abandon others completely. As we will explain below, the Authority's proposed regulations violate constitutional principles, exceed the scope of the Authority's enabling act, contradict other duly enacted statutes, and impose unreasonable, onerous, and unduly burdensome costs on the taxicab and limousine industry. There is a better way for the Authority to fulfill its mission to improve the quality of taxicab and limousine service in Philadelphia. If it is willing to concede the validity of our objections and negotiate in good faith on reasonable alternatives that respect the rule of law and do not impose excessive burdens on the industry, then we are willing to work with the Authority to resolve these issues.

COMPANIES ON WHOSE BEHALF THESE COMMENTS ARE SUBMITTED

I am submitting these comments on behalf of a group of non-medallion taxicab carriers with call or demand rights, part of which gives them the right to provide service in Philadelphia neighborhoods historically underserved by medallion taxicabs. I am also submitting these comments on behalf of a limousine company that has statewide authority to provide limousine service and, in the five-county Philadelphia metropolitan area, to charge customers on a mileage basis in vehicles equipped with meters. Finally, I am submitted these comments on behalf of a radio dispatch company that provides dispatch service to medallion taxicabs with citywide rights.

GERMANTOWN CAB COMPANY
BUCKS COUNTY SERVICE, INC.
ROSEMONT CAB CO., INC.

Germantown Cab Company ("Germantown"), Bucks County Services, Inc. ("Buck"), and Rosemont Cab Co., Inc. ("Rosemont"), are non-medallion taxicab companies, each with authority to provide call or demand service, part of which includes the right to provide service in Philadelphia neighborhoods historically underserved by medallion taxicabs.[1] Their operating territory also includes portions of the counties surrounding Philadelphia. These carriers also provide their own dispatch services from a central dispatch and employ the use of two-way

[1] Rosemont Cab Co., Inc. has an application for transfer of the operating rights of Concord Coach USA, Inc., t/d/b/a Bennett Cab currently pending before the Authority.

radios in their taxicabs. I am submitting these Comments on their behalf, but in a very real sense, I am also submitting them on behalf of the people who live and work in these Philadelphia neighborhoods that have never gotten adequate service from medallion taxicabs. Germantown, Bucks and Rosemont were created to serve the needs of the people of these neighborhoods and have proven to be the most effective means for providing quality taxicab service to them.

GERMANTOWN CAB COMPANY

On September 3, 1951, the Commission approved the application of Jack Gellar to provide call or demand service in the Germantown section of Philadelphia. In order to have his application approved, Jack Gellar had to prove that there was a need for his service in Germantown and that he was financially and technically fit to provide the service. He successfully operated his taxicab service in Germantown until 1973, when he incorporated under the name of Penn Radio Cab, Inc., and applied to transfer his individual rights to the corporation, of which he was the sole shareholder.

Upon approval of the transfer application, Gellar immediately applied for citywide rights. At the time, Yellow Cab Company of Philadelphia was the dominant taxicab carrier in Philadelphia, but was experiencing financial difficulties, which affected the quality of its service. Concern over the deterioration of Yellow Cab's service was so strong that the Commission instituted an investigation into the adequacy of service in Philadelphia under Docket No. ID 171. The Commission consolidated Jack Gellar's application for citywide rights with the Investigation docket, along with several other applications.

On March 31, 1977, the Commission concluded its investigation and found that there was an unfulfilled demand for taxicab service, at least in certain parts of the City of Philadelphia. This conclusion was based, in part, on the steady decline over a period of years in the number of taxicabs Yellow Cab was operating in Philadelphia on a daily basis. Based on these findings, the Commission granted the pending applications for the issuance of additional certificates of public convenience for citywide call or demand service in Philadelphia. As a consequence, the Commission issued a certificate of public convenience to Penn Radio Cab authorizing it to operate 30 taxicabs on a citywide basis in addition to its Germantown rights. It later transferred its citywide certificates. Its Germantown rights were transferred several times until they were eventually acquired by Germantown.

BUCKS COUNTY SERVICES

Bucks County Services is a non-medallion taxicab carrier that held operating authority in Bucks County and applied to the Commission to expand its territory into parts of Northeast Philadelphia that border Bucks County. Bucks County elected to limit the number of vehicles subject to Authority regulations because of the prohibitive cost of complying with Authority standards.

ROSEMONT CAB CO., INC.

Rosemont currently has an application for transfer of rights pending before the Authority. Rosemont entered into an agreement of sale with Concord Coach USA, Inc., t/d/b/a Bennett Cab Service ("Bennett") for the transfer of Bennett's operating rights. Rosemont filed two applications for the transfer of these rights: One with the Authority to transfer the Philadelphia portion of its operating rights and one with the Commission to transfer the non-Philadelphia portion of its rights.[2] The Commission approved Rosemont's application for transfer of Bennett's non-Philadelphia operating rights, but the Authority, without holding a hearing, denied Rosemont's application for transfer of Bennett's Philadelphia operating rights. The Authority denied the application on the grounds that Rosemont is not fit to operate because one of its owners, Jacob Gabbay, who has been involved in the management of taxicab carriers in Philadelphia for almost 40 years, is also an owner of Germantown Cab Company. The Authority found that Germantown has demonstrated a propensity to violate the regulations of the Authority, regulations that were declared invalid by the Commonwealth Court, and therefore, Mr. Gabbay should not be granted additional rights to provide service in Philadelphia.

The Authority has a procedure when it denies applications without a hearing whereby an applicant can request a de novo hearing before the Authority's Hearing Officer. Rosemont made this request in May of 2010, but the Authority has refused to schedule a hearing on Rosemont's application up to the present date. In light of subparagraph (a) of the proposed regulation providing that the Authority will not issue any new certificates for "partial rights" authority, it appears that the Authority's delay was in schedule the hearing is intentional. Clearly, the Authority intends to adopt the proposed regulation so that the Hearing Officer will have another basis for denying the transfer application.

As explained more fully below, we oppose the Authority's proposed regulations pertaining to non-medallion taxicab service because the Authority does not have the power to regulate non-medallion taxicab service.

EXECUTIVE TRANSPORTATION SERVICE, INC., t/a LUXURY SEDAN SERVICE

Executive Transportation Service, Inc., t/a Luxury Sedan Service ("Executive") has operated as a limousine company with statewide rights since 1992 under authority initially issued by the Commission under Docket No. A-00109726. In its initial tariff filed in 1992, Executive delineated four separate classes of limousine service. One of these classes, designated "Luxury Sedan Service", based its tariff solely on mileage, with a waiting time component. The Commission initially rejected the tariff, but later accepted it after Executive filed a mandamus action and secured an order directing the Commission to accept the tariff. While Executive has modified its tariff five times since 1992, it has maintained the four classes of limousine service and the mileage-based rate for "Luxury Sedan Service."

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[2] It should be noted here that this procedure is improper because, as we argue below, the operating authority is indivisible and the Parking Authorities Law specifically provides that the non-medallion taxicabs with rights in Philadelphia retain their operating rights through the Authority. So Rosemont should have filed one application for transfer with the Authority.

On August 16, 2005, the Commission entered a Final Rulemaking Order whereby it amended its regulations governing passenger, property, and household goods carriers operating in Pennsylvania. Final Rulemaking Amending 52 Pa. Code Chapters 29 and 31, Docket No. L-00020157 (Order entered August 16, 2005). One of the amendments the PUC adopted was a change in the tariff structures for limousine operators. Under the prior regulation, limousine operators were permitted to base their rates on mileage, time, or both. 52 Pa. Code § 29.334. However, the amended regulation requires that limousine rates be based solely on time. Additionally, the amended regulation requires that the initial service charge and each subsequent increment shall be no less than thirty minutes and prohibits the use of meters in limousine service. Under the amended regulation, Executive would have been required to stop using a mileage-based tariff and meters for its Luxury Sedan Service.

In anticipation of the effective date of the amended regulations, Executive filed a Petition for Exemption with the PUC. On the same date that the regulations was approved by the Commission, the Commission issued an order granting the exemption and permitting Executive to continue using its current mileage-based tariff as well as to continue utilizing onboard meters. However, the exemption was restricted to those areas where Executive was currently using the mileage tariff within its statewide authority i.e., Philadelphia, Bucks, Montgomery, Delaware, and Chester Counties. The order also provided that, if Executive expands its Luxury Sedan Service beyond its current effective service area, providing point to point service outside Bucks, Montgomery, Delaware, Chester Counties and Philadelphia, it will be required to utilize a time based tariff.

In June of 2005, the Authority adopted a regulation, PPA Reg 13(l), similar to the Commission regulation, which prohibits limousine operators from using meters or mileage based fee structures. As it did before the Commission, Executive filed a Petition for Waiver of this regulation with the Authority. The Authority granted the waiver, but it imposed several restrictions on Executive that fundamentally changed the nature and the character of its operating authority, including the following:

(a) Capping the number of vehicles Executive is permitted to operate under its previously unlimited certificate to no more than 59 vehicles with a limit on annual increases in the number of vehicles to 10% of its existing fleet;
(b) Increasing the frequency of vehicle inspections by the Authority from 25% of its fleet per year to 100% of its fleet twice a year (the Taxicab and Limousine Division has since reduce the number of vehicle inspections to one per year;
(c) Increasing its annual per vehicle assessment from $300 for the first 15 vehicles, $275 for the next 15 vehicles and $250 for the next 19 vehicles to $1250 per vehicle;
(d) Requiring Executive's drivers to obtain driver's certificates;
(e) Requiring Executive to carry in liability insurance with a combined single limit per accident of $1,500,000;
(f) Requiring Executive's meters to meet Authority standards for taxicabs;
(g) Reducing Executive's operating authority from citywide authority to a territory north of Lehigh Avenue from the Delaware River to North 22nd Street and east of North 22nd Street from Lehigh Avenue to West Hunting Park Avenue and south of West

Hunting Park Avenue to Broad Street and east of Broad Street to the Montgomery County Line.

It should be noted that the Authority never included the increased fee it was charging Executive for the renewal of its limousine rights in any budget and fee schedule it submitted to the appropriations committees of the legislature. Thus, the Authority was either concealing the increased fee from the public or the fact that it had imposed this condition on the waiver it granted. It also renders the fee illegal in that it never became effective pursuant to section 5707 of the Parking Authorities Law.[3] This highlights the need for rules and procedures governing the budget process.

It should also be noted that the Authority has been inconsistent in the granting of waivers for limousine carriers. Certain limousine carriers operating in a predominantly Hispanic neighborhood in Philadelphia could not meet the regulatory established by the Authority's first set of regulations with regard to the vehicle requirements and driver language proficiency. Like Executive, these limousine carriers were also charging customers on a mileage basis. Unlike Executive, the Authority granted waivers to these companies without requiring them to limit their territory or the number of vehicles they were operating or by paying a higher assessment fee. The Authority has continued to grant this waiver on a monthly basis.

MCQ ENTERPRISES, INC., T/A YELLOW CAB COMPANY

McQ Enterprises, Inc., t/a Yellow Cab Company ("Yellow") is a radio dispatch company that provides service to medallion taxicabs. It possesses a copyright on the color yellow for medallion taxicab service in Philadelphia. Prior to 2006, it provided a unique dispatch service through a GPS/computerized dispatch service.

PROCEDURAL HISTORY AND BACKGROUND

Before undertaking an analysis of the Authority's proposed regulations, we feel compelled to comment on the Authority's "Proposed Rulemaking Order," which misrepresents the background and procedural history of the present rulemaking proceeding. The background and procedural history is important because it determines the frame of reference for comparison of the proposed regulations.

In its "Proposed Rulemaking Order", the Authority leads us to believe that its proposed regulations, once published in their final form, will supersede and replace "existing local regulations." By "existing local regulations," the Authority means regulations it adopted and began to enforce on April 10, 2005. These regulations were not promulgated in accordance with statutory rulemaking procedures[4] and were never valid or enforceable for any purpose as a matter

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[3] All references in these Comments to sections of the Parking Authorities Law refer to sections contained in Title 53 of the Pennsylvania Consolidated Statutes.

[4] These rulemaking procedures are set forth in the Commonwealth Documents Law, 45 P.S. §§1102, 1201-1208, 1602; 45 Pa.C.S. §§501 et seq., the Regulatory Review Act, 71 P.S.

of law.[5] They may not form the basis of any agency action.[6] Furthermore, the Commonwealth Court issued a ruling to that effect so as to remove any doubt as the validity of the Authority's "existing local regulations." Accordingly, the Authority's "existing local regulations" may not be used as the basis for comparing the impact of the proposed regulations on the industry.

The truth is that the Authority's proposed regulations, when published in their final form, will supersede and replace Commission regulations, which remain in effect up to the present date. The General Assembly specifically directed the Authority to continue to enforce Commission regulations until it adopted its own regulations.[7] These regulations may be found in Chapters 29 and 30 of Title 52 of the Pennsylvania Code. It is these regulations that must be considered when evaluating the impact of the Authority's proposed regulations on the regulated industry.

In its "Proposed Rulemaking Order" the Authority states that the present rulemaking was necessitated by the Commonwealth Court's decision in Germantown, which found that the Authority is subject to the same statutory rulemaking procedures that other Commonwealth agencies must follow and declared the Authority's first set of regulations invalid and unenforceable as a matter of law. But the Authority states that the "matter is on appeal," as if to suggest that the Commonwealth Court's determination in Germantown is not final and binding upon the Authority. The truth is that the Germantown decision is not "on appeal" and the Authority is bound by it. The Authority did not have an automatic right to appeal the Germantown decision to the Supreme Court; only the right to file a petition for allowance of appeal. The Authority's petition for allowance of appeal is still pending before the Supreme Court, which may deny it as a matter of discretion.

The Authority claims that it has instituted this rulemaking proceeding "out of an abundance of caution." But the Authority has been bound to follow the statutory rulemaking procedures enacted by the General Assembly since it assumed regulatory responsibility over taxicabs and limousines in 2005. If it was not then aware of its obligations because of an erroneous interpretation of the law, it was put on notice of its obligations a year later when members of the taxicab industry instituted suit to enforce the rule of law. If the Authority had been acting "out of an abundance of caution" back then, it would have instituted a rulemaking proceeding after the complaint was filed.

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§§745.1-745.12a, and the Commonwealth Attorneys Act, 71 P.S. §732-101 et seq. and in regulations promulgated by the Joint Committee on Documents, 1 Pa.Code §1.1 et seq.

[5] *See* 45 P.S. §1208; *See also*, Germantown Cab Company v. Philadelphia Parking Authority, 993 A.2d 933 (Pa.Cmnwlth.Ct. 2010).

[6] Id.

[7] Section 22(2) of Act 2004-94 provides that "[r]egulations, orders, programs and policies of the Commission under 66 Pa.C.S. Ch. 24 and concerning limousine service regulation within cities of the first class shall remain in effect until specifically amended, rescinded or altered by the authority." 2004, July 16, P.L. 758, No. 94, §22, effective March 12, 2005.

Instead of acting "out of an abundance of caution" when it knew or should have known that it was subject to the same statutory rulemaking procedures that other Commonwealth agencies must follow, the Authority fought the lawsuit. It initially claimed that it did not have to follow the statutory rulemaking procedures applicable to Commonwealth agencies because it was not a Commonwealth agency. But the Supreme Court rejected that argument in Blount v. Philadelphia Parking Authority, 965 A.2d 226 (Pa. 2009). If the Authority had been acting "out of an abundance of caution" after the Supreme Court determined that it was a Commonwealth agency, then it would have instituted a rulemaking proceeding at that time.

Instead of acting "out of an abundance of caution" after the Supreme Court determined that it was a Commonwealth agency, the Authority sought a legislative exemption from the statutory rulemaking procedures that other Commonwealth agencies must follow. But the Governor vetoed the legislation. If the Authority had been acting "out of an abundance of caution" after the veto, then it would have instituted a rulemaking proceeding at that time.

Instead of acting "out of an abundance of caution" after the Governor's veto, the Authority continued to fight appeals from adjudications based on its invalid regulations. In defending these actions, the Authority raised a new argument, claiming that its enabling act exempts it from the same statutory rulemaking procedures that other Commonwealth agencies must follow. It is hard to reconcile how the Authority could raise this argument in good faith after it unsuccessfully sought a legislative exemption. In any event, the Commonwealth Court rejected this argument in the Germantown case. If the Authority had been acting "out of an abundance of caution" after the Germantown decision, it would have instituted a rulemaking proceeding at that time.

Instead of acting "out of an abundance of caution" after the Germantown decision, the Authority filed a petition for allowance of appeal in the Supreme Court, seeking to overturn the Germantown decision. It also continued to enforce its invalid regulations, claiming that the filing of the petition for allowance of appeal affected an automatic supersedeas. But the Commonwealth Court rejected that argument and ordered the Authority to stop enforcing its invalid regulations against Germantown after Germantown filed a petition to enforce the Commonwealth Court's decision.

Subsequent to the Commonwealth Court's order enjoining the Authority from further enforcement of its invalid regulations against Germantown, the Authority began to consider the implications of the Germantown orders on its overall operations and, in particular its enforcement actions. It realized that there were significant questions about the ongoing legitimacy of its enforcement actions and of other aspects of its operations. What followed was a period of confusion.

In enforcement actions after the Germantown orders, the Authority would sometimes issue citations based on its invalid regulations. Sometimes it issued citation based on Commission regulations. Sometimes it issued citations referring to generic violations of Act 94, which is a legislative enactment, not a statute. Sometimes it issued citations referring to statutory provisions contained in the Parking Authorities Law, without specifying particular

subsections. There was uncertainty as to what rules of administrative practice and procedure applied during hearings. Frequently, the Authority dismissed pending enforcement actions or requested multiple continuances of others because it was uncertain on how to proceed. The Germantown orders also raised questions about the Authority's vehicle inspection requirements, driver certification program, and its imposition and collection of assessments.

In the midst of this confusion, several members of the taxicab and limousine industry instituted actions before the Authority to recover fines, fees, penalties, and assessments that were illegally imposed by the Authority pursuant to its invalid regulations. The Authority assigned these matters to a hearing officer; however, the hearing officer has taken no further action on them, either because the Authority does not want to face the consequences of its illegal actions or simply wants to delay its day of reckoning with regard to its past illegal actions. The petitioners intend to institute a mandamus action in Commonwealth Court to force the Authority to consider these petitions in the near future.

Meanwhile, because the Authority's ongoing efforts to seek a legislative exemption for its rulemaking powers have stalled and because the Supreme Court has yet to act on its petition for allowance of appeal in the Germantown case, the Authority decided to choose another path. Faced with ongoing chaos in its operations, the Authority instituted this rulemaking proceeding. The Authority did not do so "out of an abundance of caution" but rather to restore order and stability to its operations. It did not take this action lightly as these actions will have consequences for both its legislative initiatives and its legal challenges to the Germantown orders. The Authority acted out of necessity.

The Authority initially avoided complying with statutory rulemaking procedures out of necessity because it knew that the regulations it had adopted would not withstand scrutiny and survive the process. To its credit, the Authority has completely redrafted its original regulations and its proposed regulations have clearly benefited from the revision in terms of form, structure, organization and clarity. But from a substantive standpoint, the propose regulations suffer from many of the same problems that plagued its original regulations. We will address these problems below; however, since the Authority acknowledges that its propose regulations are intended to replace substantially similar "existing local regulations," a brief review of the Authority's first set of regulations is warranted in order to gain context for its present proposed regulations. Such a review is useful because the Authority has administer and enforced its first set of invalid regulations over a period of years and their flaws have become apparent during that period.

THE AUTHORITY'S "SUBSTANTIALLY SIMILAR" FIRST SET OF REGULATIONS

Even though the Authority's first set of regulations never became valid, it is worth reviewing them briefly because the Authority claims that its proposed regulations are "substantially similar." The Authority's first set of regulations were never reviewed on a substantive basis because they were not adopted legally. But there were many substantive arguments that could have been raised to invalid them and they would not have survived a legitimate rulemaking or review by the courts. Unfortunately, the Authority has repeated many of the same mistakes it made in its first set of regulations making it unlikely that many of its proposed regulations will survive the present rulemaking or review by the Courts.

The Authority hired an outside consultant experienced in regulatory affairs to assist it in its first rulemaking process. But the final product was an incoherent mess and did not reflect a respect for the rule of law or an understanding of public utility law. The regulations were vague, contradictory, and equivocal. They violated constitutional rights, exceeded statutory authority, and contradicted the Authority's enabling act and other statutes. They imposed unnecessary burdens and costs, encouraged selective enforcement, and gave the Authority too much latitude to ignore regulations and to act in an arbitrary and capricious manner. In short, the Authority's first set of regulations created a rogue agency that ruled by fear and intimidation. It established a system of crony capitalism.[8]

In practice, compliance with these regulations was impossible and the fines and penalties imposed for non-compliance were steep and punitive. Carriers who challenged the Authority's power were subject to targeted enforcement, while others cowered in fear, hoping to avoid the Authority's wrath. Enforcement was easy because nearly every aspect of taxicab and limousine operations was micromanaged to the point that any investigative stop revealed violations of some aspect of the Authority's regulations. Enforcement was used as a tool for gaining concessions from carriers. When it chose to, the Authority could make enforcement onerous to the point of putting a carrier out of business. The purpose of this targeted enforcement was to get carriers to seek "waivers," a device the Authority used to force carriers to accept limitations on their operating rights and to extort higher fees from them in exchange for the right to continue operating. Executive Transportation's experience in this regard as summarized above is a prime example of this.

A joke that circulates among taxicab owners goes like this: A taxicab owner who was leaving the Authority's courtroom met another owner who asked him how it went. The first owner replied that he had gotten a $1,000 fine. The second owner asked him what he had done and the first owner replied: "Nothing, absolutely nothing." The second owner responded: "You're lying, for nothing the fine is $500."

THE AUTHORITY DOES NOT HAVE THE STATUTORY AUTHORITY TO REGULATE NON-MEDALLION TAXICAB CARRIERS

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[8] **Crony capitalism** is a term describing an allegedly capitalist economy in which success in business depends on close relationships between business people and government officials. It may be exhibited by favoritism in the distribution of legal permits, government grants, special tax breaks, and so forth.

Crony capitalism is believed to arise when political cronyism spills over into the business world; self-serving friendships and family ties between businessmen and the government influence the economy and society to the extent that it corrupts public-serving economic and political ideals.

In order to promulgate regulations pertaining to non-medallion taxicab carriers, the Authority must have statutory power to do so under its enabling act. Section 5714(d)(2) of the Parking Authorities Law provides that "[c]arriers currently authorized to provide service to designated areas within cities of the first class on a non-citywide basis shall retain their authorization through the authority." But section 5714(d)(2) does not give the Authority the power to promulgate regulations pertaining to non-medallion taxicab carriers with rights in Philadelphia, as it must, in order for the Authority to be authorized to regulate these carriers.

The Authority's power to regulate medallion taxicabs is contained in section 5722 of the Parking Authorities Law. But section 5722 of the Parking Authorities Law is just a substantial reenactment of Section 2412 of the Medallion Act.[9] Section 2412 of the Medallion Act authorized the Commission to promulgate regulations pertaining to medallion taxicab carriers only. These regulations are codified in Chapter 30 of Title 52 of the Pennsylvania Code These regulations do not apply to non-medallion taxicab carriers as the Commission ruled in Pennsylvania Public Utility Commission v. Genco Services, Inc., t/a Cheldon Radio Cab Co., Inc., 1992 Pa.PUC LEXIS 40 (PUC Docket No. A-00106517C912).

The Authority is aware that it does not have statutory authority to regulate non-medallion taxicab carriers. In fact, it lobbied the General Assembly to enact legislation amending the Parking Authorities Law to give it the power to regulate non-medallion taxicab carriers with rights in Philadelphia. House Bill 2545 introduced in the 2006 Session of the General Assembly, proposed to amend section 5714(d)(2) of the Parking Authorities Law to read as follows:

> Carriers currently authorized to provide service to designated areas within cities of the first class on a non-citywide basis shall retain their authorization [through] **pursuant to orders and regulations of** the Authority. **The Authority shall determine the geographic boundaries of such non-citywide authorization as necessary after an opportunity for hearing.** The Authority shall not grant additional rights to new or existing carriers to serve designated areas within cities of the first class on a non-citywide basis.

House Bill 2545 passed both houses of the General Assembly by overwhelming majorities, but never became law because it was vetoed by the Governor. It illustrates, however, that the Authority is aware that it lacks statutory power to regulate non-medallion taxicab carriers and serves as proof of legislative intent with regard to the powers it conferred upon Authority. The General Assembly would not have considered or passed legislation giving the Authority the power to promulgate regulations pertaining to non-medallion taxicab carriers unless it believed that such legislation was necessary to confer powers that the Authority lacked.

IT IS ABSURD, IMPOSSIBLE AND UNREASONABLE FOR NON-MEDALLION TAXICAB CARRIERS TO COMPLY WITH TWO CONFLICTING SETS OF

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[9] References to sections of the Medallion Act contained in these Comments refer to sections in Chapter 24 of Title 66 of the Pennsylvania Consolidated Statutes, also known as the Public Utility Code.

REGULATIONS ADMINISTERED AND ENFORCED BY TWO SEPARATE AGENCIES

When ascertaining the intention of the General Assembly in the enactment of a statute, we may presume "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."[10] Applying this presumption to Act 2004-94, one may ascertain that the General Assembly did not intend to give the Authority power to regulate non-medallion taxicab service. For clearly, it would be absurd, impossible, and unreasonable for one entity to comply with two sets of conflicting regulatory standards governing its operations and administered and enforced by two separate agencies. Yet, this is result the Authority proposes to implement by promulgating regulations that pertain to non-medallion taxicab service.

In fact, this is precisely the regulatory scheme the Authority has enforced illegally for the past five years. For the past five years, non-medallion taxicabs have had to serve two masters. They pay assessments to the Commission and Authority. The Commission inspects their vehicles annually and the Authority inspects them biannually. Oh, and they also have to have an annual PennDoT inspection as well. This does not count the numerous field inspections conducted by both agencies. They can only use part of their fleet for service in Philadelphia because Authority vehicles standards are different from Commission standards. The Authority requires drivers to be certified. Both agencies require annual filings in order for them to maintain their rights. Both agencies can institute enforcement actions against them. They can be cited for the same violation in the same vehicle on the same day and be subject to two separate prosecutions and pay two separate fines by two different agencies. Clearly, this is not what the General Assembly intended.

Although non-medallion taxicab carriers with rights in Philadelphia retain those rights through the Authority[11], they remain subject to regulation by the Commission. The General Assembly did not intend the absurd, impossible and unreasonable result of non-medallion taxicab service being regulated by two agencies when it enacted Act 2004-94. Rather, it intended Commission regulations to remain in place and gave Authority enforcement officers the power to commence and prosecute complaints against non-medallion taxicab drivers and carriers in two situations: Before the Authority for violations of the Parking Authorities Law[12] and before the Commission for violation of Commission regulations.[13]

Authority enforcement officers may commence and prosecute complaints before the Authority against non-medallion taxicab drivers and carriers for violations of Section 5714(e) of the Parking Authorities Law (pertaining to operation of taxicabs in citywide service without a medallion) because the Authority is responsible for administering and enforcing the Act. But it

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[10] 1 Pa.C.S. §1922

[11] 53 Pa.C.S. §5714(d)(2).

[12] 53 Pa.C.S. §5705(b)(1)

[13] 53 Pa.C.S. §5705(b)(2)(ii)

may only commence and prosecute complaints against non-medallion taxicab drivers and carriers for regulatory violations before the Commission because the Commission is responsible for regulating non-medallion taxicab service.

NO REPRESENTATION ON THE ADVISORY COMMITTEE

There is plenty of support in Act 2004-94 for the conclusion that the General Assembly did not intend the Authority to have the power to regulate non-medallion taxicab carriers. For example, Act 2004-94 establishes the "City of the First Class Taxicab and Limousine Advisory Committee" to consider issues and questions submitted to it by the Authority regarding the regulation, enforcement, compliance and operation of taxicabs and limousines in Philadelphia.[14] The committee may comment on these issues and questions and may submit its own suggestions and proposals to the Authority on topics considered important by a majority of its members. The Act requires membership of the committee to include, *inter alia*, a taxicab driver, a medallion owner, a dispatch owner, and a limousine owner. But it does not require a non-medallion taxicab owner to have a seat on the committee. Clearly, the General Assembly omitted representation of non-medallion taxicab carriers on the committee because it did not intend the Authority to have the power to regulate this service.

NO EXTENSION OF NON-MEDALLION TAXICAB REGULATIONS

Further support for the conclusion that the General Assembly did not intend to give the Authority power to regulate non-medallion taxicab carriers may be found in Section 22(2) of Act 2004-94, which provides that "[r]egulations, orders, programs and policies of the commission under 66 Pa.C.S. Ch. 24 and concerning limousine service regulation within cities of the first class shall remain in effect until specifically amended, rescinded or altered by the authority." The General Assembly enacted this provision to fill the regulatory void created by repeal of the Medallion Act and amendment of the Parking Authorities Law by giving the Authority time to promulgate its own regulations covering medallion taxicab service and limousine service. Clearly, the omission of any reference to non-medallion taxicab service in Section 22(2), indicates that the General Assembly did not intent the enactment of Act 2004-94 to affect the regulation of non-medallion taxicab service or to give the Authority power over it. Otherwise, Section 22(2) would have provided that regulations pertaining to non-medallion taxicab service would remain in effect until the Authority promulgates regulations pertaining to it.

NO POWER TO CANCEL OR REVOKE NON-MEDALLION TAXICAB CERTIFICATES FOR VIOLATIONS OF THE ACT OR AUTHORITY REGULATIONS

Another indication that the General Assembly did not intend to give the Authority power to regulate non-medallion taxicab carriers is the fact that the General Assembly did not give the Authority power to cancel or revoke certificates of public convenience issued to non-medallion taxicabs for violations of the act or the Authority's regulations. The Authority has power pursuant to section 5713(b) of the Parking Authorities Law to cancel certificates of public convenience held by medallion taxicab carriers, upon due cause shown, for violation of the act or

[14] 53 Pa.C.S. §5702

the Authority's regulations. The Authority also has the power pursuant to section 5741.1 of the Parking Authorities Law to rescind or revoke any certificate of public convenience to any existing holder or any new recipient for the operation of limousines within Philadelphia.

The Authority may, pursuant to section 5711(c)(3) of the Parking Authorities Law rescind or revoke any certificate of public convenience for the operation of taxicabs within a city of the first class whenever it is shown that the holder of the certificate is not operating the taxicabs on an average of 50% of the time over any consecutive three-month period (i.e. when the authority has been abandoned). But it has no power to revoke for regulatory reasons (i.e. violation of the act or the Authority's regulations).

NO POWER TO ALLOCATE REGULATORY EXPENSES BETWEEN MEDALLION AND NON-MEDALLION TAXICAB CARRIERS

Another indication that the General Assembly did not intend to give the Authority power to regulate non-medallion taxicab carriers is the fact that the General Assembly did not give the Authority power to allocate regulatory expenses between medallion and non-medallion taxicab carriers nor did it provide for specific fees for non-medallion taxicabs.

Historically, the Commission had the power to allocate regulatory expenses between groups of utilities providing different types of service. The Commission regulates a large variety of public utilities which may be grouped according to the type of service they provide. When it enacted Section 510 of the Public Utility Code, the General Assembly gave the Commission power to allocate regulatory expenses to each group of utilities based on the expenditures attributable to that group from the preceding fiscal year. Each utility within a group is then assessed on a pro-rata basis.

The assessment formula is based on an estimate of the Commission's expenditures for the upcoming fiscal year, which is capped at 3/10 of 1% of the gross revenues of all public utilities under the Commission's jurisdiction for the preceding year. This estimate, subject to certain reductions, constitutes the total assessment the Commission may impose on all of the utilities under its jurisdiction. In other words, the Commission has a cap on what it may budget for expenditures for the upcoming fiscal year and may allocate those expenses among groups of utilities that provide the same service.

The allocation to each group of utilities is based on the Commission's determination of the regulatory expenditures it incurred for that group in the preceding year. Each individual utility within a group is then assessed on a pro-rata basis according to its revenue. Its individual assessment is based on the percentage its revenue bears to the revenues of the entire group.

Prior to enactment of the Medallion Act all taxicab carriers throughout the Commonwealth were subject to assessment under section 510 of the Public Utility Code.[15] Because of the unique character of medallion taxicab service, the Medallion Act exempted

[15] 66 Pa.C.S. §510 – All references to sections of the Public Utility Code in these Comments refer to sections in Title 66 of the Pennsylvania Consolidated Statutes.

citywide medallion taxicab carriers from assessment under section 510 of the Public Utility Code and provided for an initial medallion fee and annual reissuance fee under sections 2402 and 2406 of the Medallion Act. The amount of the initial medallion fee and annual reissuance fees were determined under section 2414 of the Medallion Act (relating to budget and fees). These fees were deposited into a fund segregated from all other funds collected by the Commission and dedicated to the payment of regulatory expenses associated with administration of the Medallion Program. There was no need to allocate regulatory expenses under the Medallion Act because there was only one group of utilities covered by its provisions. Non-medallion taxicab carriers and limousine carriers continued to be assessed under section 510 of the Public Utility Code.

When Act 2004-94 gave the Authority power to regulate limousine carriers providing service in Philadelphia, it created a second fund for the deposit of limousine carrier fees to cover expenditures associated with the Authority's regulation of limousine carriers. It is not necessary for the Authority to allocate regulatory expenses between utilities providing different services because the fees paid by medallion taxicab carriers and limousine carriers are deposited into separate accounts.

If non-medallion taxicab carriers are subject to regulation by the Authority, then the Authority must have the power to allocate regulatory expenses between medallion taxicab carriers and non-medallion taxicab carriers because they provide different services. The services are different because medallion taxicabs may operate on a citywide basis, but in only one vehicle, while non-medallion taxicabs may operate both inside and outside the city in limited areas in an unlimited number of vehicles. Thus, the absence of the power to allocate regulatory expenses between medallion and non-medallion taxicab carriers indicates that the Authority was not intended to have the power to regulate non-medallion taxicab carriers.

PROPOSED REGULATIONS PERTAINING TO "PARTIAL RIGHTS" TAXICABS

As noted above, we do not believe the General Assembly intended to give the Authority power to regulate non-medallion taxicabs with call or demand authority, part of which gives them the right to provide service in Philadelphia neighborhoods that have been historically underserved by medallion taxicabs. We intend to bring that issue before the Commonwealth Court if the Authority adopts these regulations as proposed. That being said, we now proceed to comment on proposed regulations pertaining to what the Authority calls "partial rights" taxicabs.

Section 1011.2 – Definitions

Chapter 1015 of the Authority's proposed regulations pertains to non-medallion taxicabs with rights to provide service in a portion of Philadelphia. The Authority defines the term "Partial Rights Taxicab" in Section 1011.2 as follows:

> "A taxicab authorized by the Authority to provide common carrier call or demand transportation of persons for compensation on a non-citywide basis, under Chapter 1015 (relating to partial rights taxicabs) and section 5711(c)(2) and 5714(d)(2) of the act (relating to power of Authority to issue certificates of public convenience; and certificate and medallion required)."

Neither the term "partial rights taxicab" nor this definition accurately or completely describes the non-medallion taxicab companies that have call or demand authority, part of which gives them the right to provide service in Philadelphia neighborhoods historically underserved by medallion taxicabs.

The term "partial" is a comparative term. When the Authority uses it, it means to compare the operating authorities of citywide medallion taxicab carriers to that portion of the operating authority of non-medallion taxicab carriers that authorizes them to provide call or demand service in Philadelphia neighborhoods historically underserved by medallion taxicabs. It is a purely geographical comparison of rights based on an imaginary political boundary that artificially cuts off the rest of the operating territory of the non-medallion taxicab carriers. In other words, all it means is that part of the territory of the non-medallion taxicab carriers includes part of the city as compared to medallion taxicabs that have citywide rights.

The Authority uses this geographical comparison because it believes that its mission to improve taxicab and limousine service in Philadelphia stops at the city limits. What the Authority fails to understand is that it cannot regulate only part of an operating authority. The rights of non-medallion taxicab carriers are not determined by the scope of the Authority's mission. The Authority's mission is determined by the scope of the operating rights of the entities it regulates. Of course, as noted above, we do not believe the General Assembly gave the Authority power to regulate non-medallion taxicab carriers at all.

But this is an important concept. Operating territories are unified, indivisible wholes. In other words, the Philadelphia portions of the operating territories of non-medallion taxicabs are inseparable from the non-Philadelphia portions. One cannot exist without the other nor can they be regulated separately. It is important to note here that the Commission regulates the operating authority of these non-medallion taxicab carriers as a unified whole. Commission enforcement officers routinely conduct field inspections within Philadelphia and the Commission assesses non-medallion taxicabs on their entire revenue, not just on revenues generated outside of Philadelphia.

The public need that arises within these territories and the manner in which these needs are served within these territories is not divisible by imaginary municipal boundaries. The territories were granted on the basis of the public need unique to that particular territory in its entirety and on the basis of the manner in which the need was proposed to be served in that territory in its entirety. Division of these territories by municipal boundaries changes the fundamental nature of the public need that arises within them and the manner in which it is served. The General Assembly did not intend for Act 2004-94 to enact such fundamental changes in the character of the authority or service of these non-medallion taxicab companies.

Think of the game of Poker. One of the best hands in Poker is a Royal Flush, which consists of an Ace, King, Queen, Jack, and Ten in the same suit. If you have a Royal Flush, you are likely to win the hand and can rely on the strength of your hand in risking a large sum of money. But each individual card is necessary in order to constitute a Royal Flush. If one is taken away, or if the suit of any card is changed, then the hand is no longer a Royal Flush and it

becomes a losing hand. One would not wager a large sum on a hand with an Ace, King, Queen, and Ten of Hearts with a Three of Clubs because it is most likely a losing hand.

The operating territories of the non-medallion taxicab companies are like Royal Flushes. These are the cards they were dealt when the Commission granted their applications for operating authority. They have been risking time, energy and capital on these cards based on their expectation that they hold a "winning hand." When the Authority implemented Act 2004-94, it took some of non-medallion taxicab carriers' "cards" away by dividing their territories with the city limits of Philadelphia.

CHAPTER 1015 – PARTIAL RIGHTS TAXICABS

Section 1015.1 – Purpose

The parallel Commission regulations are contained in Chapter 29, which also governs the operations of non-medallion taxicabs with call or demand authority, part of which gives them the right to provide service in Philadelphia neighborhoods historically underserved by medallion taxicab carriers. Commission regulations remain in effect and are actively enforced by Commission enforcement officers. As noted above, we believe the Authority has no power to regulate non-medallion taxicabs. We will compare and contrast Commission regulations to the Authority's proposed regulations as appropriate.

Subparagraph (b) declares that non-medallion taxicab service is substantially similar to service provided by medallion taxicab service. But this could not be further from the truth. Medallion taxicab carriers have rights to provide service on a citywide basis. In practice, however, a large portion of medallion taxicab service is provided to business travelers and tourists going to and from the Philadelphia International Airport or the 30th Street Train Station and points within Center City. Medallion taxicabs also provide service to Center City office workers travelling from point to point within Center City. But medallion taxicabs do not provide adequate service to certain Philadelphia neighborhoods.

The reasons for this are simple. It is more lucrative to take people to and from the airport and train station to Center City than it is to take elderly women to the grocery store or doctor's office near their homes. As a consequence neighborhoods, like the ones served by the non-medallion taxicabs filing these Comments have always been underserved by taxicab carriers with citywide rights.

Attempts to regulate citywide medallion taxicab service to improve service in historically underserved areas of Philadelphia now being served by these non-medallion taxicab companies have failed in the past. As the Authority undertakes to regulate citywide medallion service in Philadelphia, it should be aware of unsuccessful past attempts to improve service in underserved neighborhoods by taxicabs with citywide rights and should appreciate the extent to which this problem has been solved by non-medallion taxicabs.

The Commission approved the applications for authority to provide service in these neighborhoods because these neighborhoods were, and are, underserved by taxicabs with

citywide medallion authority. These neighborhoods are some of the poorest neighborhoods in the city and have some of the highest crime rates. Taxicabs with neighborhood rights drive around on streets ***in*** these neighborhoods. Taxicabs with citywide medallion rights drive on streets that take them ***around*** these neighborhoods.

There is competition between non-medallion neighborhood taxicab companies and citywide medallion companies because the non-medallion taxicabs also take passengers to and from the airport and train station and to and from Center City. But the competition for service from point to point within these neighborhoods has always been theoretical. In order for a carrier to provide adequate service in these neighborhood, a carrier must gear its operation for the local nature of the service. In other words, the carrier must dedicate a large number of vehicles to run short trips that do not generate significant fares. But by marketing itself as a reliable provider of transportation service within the neighborhood and dispatching its cabs locally, it can generate the volume necessary to make the carrier profitable. Citywide carriers just are not capable of doing this because they provide a truly different type of service.

Getting citywide medallion taxicabs to provide service in underserved parts of the city has always been a problem in Philadelphia. The General Assembly has attempted to deal with this problem in various ways. But the only method that has worked has been to give the Commission the power to issue rights to carriers dedicated to providing service in these underserved areas rather than on a citywide basis.

Section 1015.2 Certificate required.

Subparagraph (a) of the proposed regulation is inartfully worded in that it provides that a "person" who operates a taxicab must have a certificate. This is not an accurate statement of the law, or even the Authority's intent. Obviously, the "person" operating the taxicab, who could be a driver does not have to be the "certificate holder." The Authority defines the term "person" in Section 1001.10 as follows: "Except as otherwise provided in this part or in the act, a natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, representatives, receivers, agencies, governmental entities, municipalities, or other political subdivisions, or other form of legal business entity." The Authority defines the term "regulated person" as follows: "A certificate holder, broker, taxicab driver, or other person subject to the act, this part or an order of the Authority."

Section 1015.3 New or additional rights restricted.

We object to subparagraphs (a) and (c) of the proposed regulation because they are contrary to the Authority's enabling act. Section 5714(d)(2) of the Parking Authority Law provides:

> "Carriers currently authorized to provide service to designated areas within cities of the first class on a non-citywide basis shall retain their authorization through the authority. The authority shall not grant additional rights to new or existing

carriers to serve designated areas within cities of the first class on a non-citywide basis."

The statute prohibits the granting of additional rights to new or existing carriers, meaning that it cannot authorize call or demand service in areas beyond those already granted. This is a codification of the Commonwealth Court's decision in Dee-Dee Cab Company v. Pennsylvania Public Utility Commission, 817 A.2d 993 (Pa.Cmnwlth.Ct. 2003). Subparagraph (b) is consistent with the Authority's statutory powers as set forth above.

But the statute does not prohibit the issuance of a new certificate for "partial rights" taxicab service as provided subparagraph (a). The Authority may issue a new certificate to a successor in interest of an existing certificate holder. The Authority does not have the statutory authority to restrict the right to transfer existing authority. The statute also does not prohibit the issuance or reissuance of a certificate of public convenience after an existing certificate is cancelled, surrendered or finally terminated as provided in subparagraph (c). The Authority does not have the statutory authority to restrict the right of individuals to apply for rights previously granted to provide call or demand service in portions of Philadelphia.

The proposed regulation is of particular interest to Rosemont Cab Co., Inc. ("Rosemont"), which currently has an application for transfer of rights pending before the Authority. Rosemont entered into an agreement of sale with Concord Coach USA, Inc., t/d/b/a Bennett Cab Service ("Bennett") for the transfer of Bennett's operating rights. Rosemont filed two applications for the transfer of these rights: One with the Authority to transfer the Philadelphia portion of its operating rights and one with the Commission to transfer the non-Philadelphia portion of its rights.[16] The Commission approved Rosemont's application for transfer of Bennett's non-Philadelphia operating rights, but the Authority, without holding a hearing, denied Rosemont's application for transfer of Bennett's Philadelphia operating rights. The Authority denied the application on the grounds that Rosemont is not fit to operate because one of its owners, Jacob Gabbay, who has been involved in the management of taxicab carriers in Philadelphia for almost 40 years, is also an owner of Germantown Cab Company. The Authority found that Germantown has demonstrated a propensity to violate the regulations of the Authority, regulations that were declared invalid by the Commonwealth Court, and therefore, Mr. Gabbay should not be granted additional rights to provide service in Philadelphia.

The Authority has a procedure when it denies applications without a hearing whereby an applicant can request a de novo hearing before the Authority's Hearing Officer. Rosemont made this request in May of 2010, but the Authority has refused to schedule a hearing on Rosemont's application up to the present date. In light of subparagraph (a) of the proposed regulation providing that the Authority will not issue any new certificates for "partial rights" authority, it appears that the Authority's delay was in schedule the hearing is intentional. Clearly, the

[16] It should be noted here that this procedure is improper because, as we have argued above, the operating authority is indivisible and the Parking Authorities Law specifically provides that the non-medallion taxicabs with rights in Philadelphia retain their operating rights through the Authority. So Rosemont should have filed one application for transfer with the Authority.

Authority intends to adopt the proposed regulation so that the Hearing Officer will have another basis for denying the transfer application.

We object to subparagraph (d) on the grounds that the Authority does not have statutory authority to limit the number of taxicabs operated by non-medallion taxicab carriers. Non-medallion taxicabs may operate an unlimited number of vehicles to provide service under their operating rights. The Authority only has statutory authority to limit the number of taxicabs operated by medallion taxicab carriers pursuant to Section 5713(b) of the Parking Authorities Law. There is no statutory authority to limit the number of vehicles operated by non-medallion taxicabs.

Section 1015.4 Partial-rights certificate holders.

It is improper to incorporate the identity of existing non-medallion carriers with operating rights in Philadelphia into the Authority's regulations. The identity of these carriers will change over time as certificates are transferred or cancelled, making this provision obsolete. To the extent the list contains more than five carriers, it is contrary to statute. Section 5711(c)(2) of the Parking Authorities Law authorizes the Authority to issue no more than five certificates of public convenience for limited service in Philadelphia.

Also, some of the operating territories described in subparagraph (b) are factually incorrect in that some of them only describe the Philadelphia portion of their operating territories.

Section 1015.5 Partial-rights taxicab numbers.

The proposed regulation places an undue burden on non-medallion taxicab carriers by requiring monthly reports of vehicles and drivers. In this age of computers, once a vehicle or driver is reported to the Authority, there should be no need for a monthly report. If the Authority requires vehicle changes to be reported when they occur, its records should always be up to date and it should be able to generate a report with the touch of a button listing all of the vehicles registered to a particular carrier.

The Authority does not have the power to require certification of non-medallion taxicab drivers or to regulate the carriers for whom they drive. Standards for non-medallion taxicab drivers are set forth in Chapter 29 of the Commission's regulations.

SUBPART B. TAXICABS

Chapter 1011 General Provisions

Section 1011.1 Purpose

To the extent the Authority is authorized to apply the provisions of this Chapter to non-medallion taxicabs, we submit these Comments.

Section 1011.3 Annual rights renewal process

Subparagraph (a) pertains to expiration of rights. Rights granted by the Commission or the Authority under a certificate of public convenience do not expire. The General Assembly gave the Authority power to issue new certificates under section 5711 of the Parking Authorities Law, but no power to renew certificates of public convenience. This regulation exceeds the scope of the Authority's power under its enabling act.

Subparagraph (2) pertains to renewal of driver certificates. It is unduly burdensome to require drivers to renew their certificates on an annual basis. The Authority should consider a three to five year renewal period.

Subparagraph (4) pertains to renewal of rights issued through waiver. The Authority has no statutory power to issue rights through waiver. This provision exceeds the scope of the Authority's statutory powers.

Subparagraph (b) pertains to cancellation of expired rights. The Authority does not have the power to cancel non-medallion taxicab certificates of public convenience, except for abandonment of rights pursuant to Section 5711(c)(3) of the Parking Authorities Law. This regulation exceeds the Authority's statutory powers under its enabling act.

Subparagraph (c) pertains to forms and deadlines. The content of all forms or the information required to be submitted in the form should be incorporated in the Authority's regulations so that the regulated industry knows what is required of them and so that the regulated industry may evaluate whether the Authority has the power to request the information.

Subparagraph (d) pertains to renewal denial. Since the Authority does not have the statutory power to renew rights held under a certificate of public convenience, it does not have the power to deny an application for renewal.

Subparagraph (e) pertains to renewal of suspended rights. Since the Authority does not have the statutory power to suspend or renew rights held under a certificate of public convenience, this proposed regulation exceeds the Authority's power under its enabling act.

Section 1011.4 Annual assessments and renewal fees.

The Authority has statutory power to impose an annual medallion reissuance fee pursuant to section 5716 of the Parking Authorities Law. Section 5716 also references transfer fees for medallions and certificates of public convenience. But the Authority has no specific statutory power to impose assessments. The Authority does have power under section 5707 of the Parking Authorities Law to formulate and submit an annual budget and fee schedule to the appropriations committees of both houses of the state legislature, which becomes effective if neither house passes a resolution disapproving it. But this process only determines the effective date of the Authority's fee schedule.

The Commission has statutory power under section 510 of the Public Utility Code to allocate regulatory expenditures among groups of utilities that provide the same service and to assess utilities based on a formula set forth in the statute. But the General Assembly did not give the Authority these powers. One presumes that the Authority may promulgate rules and procedures for the formulation and adoption of its annual budget and fee schedule. But the Authority has not proposed any such regulations in this rulemaking proceeding. We request the Authority to consider supplementing these regulations to include such procedures.

We should note that, for the first time, the Authority has posted its proposed budget and fee schedule on its website in advance of its submission to the appropriations committees. We presume that it did so because it now realizes that its prior practice of publishing it after it became effective violated procedural due process requirements. We applaud the Authority's concern for the public's due process rights. But we would much prefer that the Authority adopt rules and procedures to govern its budget process so that members of the regulated industry may have a meaningful opportunity to participate in the process.

These rules should include a specific date for notice to the public of the Authority's proposed submission to the appropriations committees of the legislature. But it should also contain formulae or criteria the Authority intends to use to calculate the annual medallion fee and any other fees it imposes directly on carriers. It should also identify the data on which it relies to formulate its budget and fee schedule and how this information is to be gathered.

As noted above, we believe that the Authority does not have the power to allocate regulatory expenditures between groups of utilities that provide the same service. But, if it is determined that the Authority may do so, we believe its regulations should set forth the procedure the Authority intends to use to make that allocation.

We also believe the assessment payment procedure is cumbersome and do not understand why carriers must make appointments to pay their assessments. We also believe that immediate suspension of operating authority for late payments is not an appropriate sanction and is not in the public interest. We also believe that the eligibility requirements for the installment plan for assessment payment are onerous and punitive.

Section 1011.5 Ineligibility due to conviction or arrest

There really is not parallel Commission rule. There is probably no rule like this anywhere in the Free World. The Commission does have rules pertaining to driver disqualification at 52 Pa.Code §29.505, applicable to non-medallion carriers. It provides:

> A common or contract carrier may not permit a person to operate a vehicle in its authorized service when the person was convicted of a felony or a misdemeanor under the laws of the Commonwealth or under the laws of another jurisdiction, to the extent the conviction relates adversely to that person's suitability to provide service safely and legally.

Non-medallion taxicab drivers are not required to be certified. So this rule places the regulatory burden on the carrier to prevent individuals with certain convictions from operating a vehicle in authorized service. The conviction must relate to the person's suitability to provide service safely and legally. The rule is broad enough to allow case by case of an individual's suitability to drive a taxicab. It allows the Commission to institute proceedings if it disagrees with a carriers evaluation of a drivers qualifications.

The Commission has also adopted a regulation applicable to medallion taxicab drivers, who are required to be certified, at 52 Pa.Code §30.72(f) and (g), which provide:

> (f) *Disqualification by reason of felony conviction.* A taxi driver's certificate will not be issued to an individual convicted of a felony under the laws of the Commonwealth or under the laws of another jurisdiction and who is under the supervision of a court or correctional institution as a result of that conviction so long as a court or correctional institution maintains some form of supervision. The supervision may include incarceration, probation, parole and furlough.
>
> (g) *Disqualification for conviction of crime of moral turpitude.* A taxi driver's certificate will not be issued to an individual convicted of a crime of moral turpitude, whether a felony or misdemeanor, under the laws of the Commonwealth or another jurisdiction and who is under the supervision of a court or correctional institution as a result of that conviction so long as the court or correctional institution maintains some form of supervision. The supervision may include incarceration, probation, parole and furlough.

This rule is more specific and disqualifies an individual only during the period of the court imposed sentence, including any period of probation, parole or furlough. We note in passing that the Commission probably did not need to include the period of incarceration in the period of disqualification.

The Authority's proposed rule:

(a) Applies to individuals who hold certificates of public convenience, corporate directors, officers, and shareholders with more than a 5% interest in the corporation, partners in a partnership, and members in a limited liability company;
(b) Applies to persons convicted of felonies, crimes involving moral turpitude (CIMT), the entire category of homicides, assaults, kidnapping, and sexual offenses;
(c) Applies to individuals accepted into the Accelerated Rehabilitative Disposition (ARD) Program, a pre-trial diversionary program for first time non-violent offenders where there is no finding or admission of guilt and where the charges are dismissed upon successful completion of the program;
(d) Disqualifies any of the foregoing individuals from owning any interest in any right issued by the Authority;

(e) Extends the period of disqualification for 5 years from the date of conviction or 6 months after the completion of any sentence and until completion of the terms of the ARD program by any of the foregoing persons;
(f) Requires immediate suspension and sale of operating authority upon conviction or acceptance into the ARD program of any of the foregoing individuals;
(g) Requires notification to the Authority within 72 of any arrest, even if no charges are brought, or any conviction for any of the above offenses, or of acceptance in the ARD program of any of the foregoing persons;
(h) Allows the Authority to initiate a complaint and seek immediate suspension of operating rights upon the initiation of a criminal prosecution against any of the foregoing persons.

The Authority defines the term "key employee" as "an individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that affect the operations of an applicant, certificate holder, or other entity identified by the Authority."

Under the proposed rule, a certificate holder would have to immediately suspend operations and initiate the sale of its certificate, if its chief mechanic were accepted into the ARD program after an arrest for driving under the influence of alcohol and the Authority could initiate a formal complaint and seek immediate suspension upon his arrest.

We object to the proposed regulation on the grounds that it is overly broad, unduly burdensome and bears no relationship to public safety or the provision of taxicab or limousine service. It also unconstitutional and violates statutory law applicable to Commonwealth agencies.

We request the Commission to consider abandoning this rule and adopting an alternate rule that bears some relationship to public safety, meaning it should only apply to drivers and should only relate to convictions for crimes that affect the suitability of an individual to drive a taxicab. Acceptance in the ARD program should not be included since it does not involve an admission or finding of guilt for the underlying charges.

We believe that "crimes of violence" as defined by 18 U.S.C. §16 should disqualify a driver from obtaining a driver certificate. Section 16 defines a "crime of violence" as: "An offense that has as an element the use, attempted use or threatened use of physical force against the person or property of another or any other offense that is a felony and that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." We also believe that "crimes involving moral turpitude" should be evaluated on a case by case basis and should include both an *actus reus* (bad act) and a *mens rea* (bad intent). We believe the Authority should employ a categorical approach when evaluating whether a conviction disqualifies a driver for the issuance of a certificate, meaning that the Authority should only consider the minimum conduct necessary to secure a conviction under the statute of conviction and not the allegations contained in the affidavit of probable cause or the criminal indictment or complaint. We believe the Authority should provide for review before a hearing officer if an application is rejected or denied on

account of a conviction. We also believe that the period of disqualification should not extend beyond any sentence imposed by the court of conviction.

Section 1011.6 Fleet Program

We appreciate the establishment of the Fleet Program in these proposed regulations, although it already exists pursuant to city ordinance. Under the current version of the Fleet Program, the Authority requires participating carriers to provide the number of the driver certificate issued by the Authority before it transfers liability to the driver. This requirement is contrary to the city ordinance and prevents non-medallion taxicab carriers from participating in the program because its drivers are not required to obtain driver certificates. We realize that the Authority is proposing to require non-medallion taxicab drivers to obtain driver certificates; however, as we argue elsewhere, the Authority does not have statutory power to require non-medallion taxicab drivers to obtain driver certificates because the provision adopted by Act 2004-94 do not apply to them.

Section 1011.7. Payment of outstanding fines, fees, penalties and taxes.

The Authority has statutory authority under section 5716 of the Parking Authorities Law to enforce the payment of "all outstanding authority fines, penalties and fees" owed to it as part of the medallion reissuance process. But it does not have statutory authority to enforce payment of taxes owed to the Commonwealth or the City of Philadelphia. Furthermore, public utilities are exempt from city wage and business privilege taxes pursuant to the Sterling Act[17] and are not required to hold a Business Privilege License. The Authority does not have the statutory authority to require that "regulated persons" hold a Business Privilege License or pay their taxes.

Section 1011.8 Facilities Inspection

The parallel Commission regulation is The proposed rule requires carriers to make their operating locations available for inspection by the Authority but places on limits on when or how these inspections may be conducted. We request the Authority to consider incorporating limits on inspections, such as conducting them during normal business hours and so as to minimize disruption to a carrier's operations.

Also, the rule does not provide for fines or penalties that may be imposed for failing to comply with this provision. We request the Authority to incorporate specific fines and penalties that may be imposed for violation of this provision in the provision and further requests the Authority to adopt a schedule of fines and penalties the Authority may impose for violation of these regulations.

Section 1011.10 Discrimination in service.

The parallel Commission rule is 52 Pa.Code 30.75(f), which is in the subchapter on driver regulations for medallion taxicabs. The Commission did not adopt a regulation applicable

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[17] 53 P.S. §15971

to the drivers of non-medallion taxicabs. We believe it is more appropriate for this provision to be in the subchapter applicable to driver standards and do not understand why it is in the subchapter on General Provisions.

The Authority's proposed rule is similar, but it omits the following language: "A driver shall, when on duty and not engaged, furnish trip service on demand to an orderly person for lawful purposes."

We are concerned that this rule conflicts with other rules applicable to non-medallion taxicabs prohibiting service outside of the carrier's authorized territory.

Also, the rule does not provide for fines or penalties that may be imposed for failing to comply with this provision. We request the Authority to incorporate specific fines and penalties that may be imposed for violation of this provision in the provision and further requests the Authority to adopt a schedule of fines and penalties the Authority may impose for violation of these regulations.

Section 1011.11 Record retention.

There is no parallel Commission rule, although some Commission rule require retention of records for much shorter periods. It is not clear what record the Authority is referring to that need to be retained. We request the Commission to clarify what records it wants retained for five years and request that a list of those records be incorporated into this rule so that the obligations it imposes are clear. We also request an explanation why it is necessary for a carrier to retain these records for five years. We also believe that it is unduly burdensome for the Authority to require both electronic and paper records and to require that records be maintained in chronological order by date and time of day. The requirement for a fire suppression system is also totally absurd. We request the Authority to explain how it calculated the cost of complying with this requirement and concluded that it would revenue neutral.

We object to the requirement of maintain duplicate records at a secondary location at least 1 mile from the office where the records originated. This is a totally absurd and ridiculous rule.

We also note that the rule does not contain any sanctions for violation of this rule. We request the Authority to incorporate the specific penalties or fines that may be imposed for violation of this rule in the rule itself or in its schedule of fines and penalties elsewhere in its rules. For example, the Authority should specify the penalty that will be imposed if the Authority determines that a carrier's log sheets for a particular date four and a half years ago are not in order according to time of day. We are also anxious to determine what fine the Authority will impose when it determines that a carrier has stored electronic records at a secondary location that is only a half mile from the original records. We also request the Authority to explain how it calculated the cost necessary to comply with this rule and how it determined that it would be revenue neutral.

Section 1011.12 Aiding or abetting violations

This provision pertains to aiding, abetting, encouraging, or requiring a regulated party to violate the act, the Authority's regulations or an order of the Authority. The proposed regulation does not provide for any fine or penalty for violation of the provision. We request that the Authority incorporate the potential fine and penalties for violation of the rule in the rule itself and in a schedule of fines and penalties it adopts as part of these regulations.

The Authority's definition of "person" under Section 1001.10 includes "natural persons", "representatives," "agencies", and "governmental entities."

Would an Authority enforcement officer who solicits a bribe from a "regulated person" as part of an undercover investigation be in violation of this section? Would an attorney who counsels his client that a regulatory provision is illegal be in violation of this section? Would the Commission be in violation of this provision for requiring a "regulated person" to meet a standard that contradicts an Authority regulation?

Section 1011.15 Death or incapacitation of a certificate holder or certain persons with a controlling interest.

The parallel Commission regulation is 52 Pa.Code §29.32 and only applies to certificates of public convenience held by individuals who die or become incapacitated. The Commission rule provides for continuation of rights in the personal representative of a deceased or incapacitated individual certificate holder for one year, after which the Commission will institute proceedings to terminate the rights held under the certificate, unless the personal representative has filed an application to transfer rights, in which case the rights will continue until the application is granted or denied. It also provides that, if the legal representative files a transfer application more than 30 days before the expiration of one year, the Commission may, at its discretion and for cause shown, permit the transfer of the rights to the executors, administrators, guardians, trustees or other legal representatives of the deceased or incapacitated holder for a period to be fixed by the Commission.

The Authority's rule applies not only to individual certificate holders but also to certificates held by corporations, partnerships, and limited liability companies. We understand why there should be a rule for transfer of a certificate of public convenience held by an individual when the individual dies or becomes incapacitated. But we do not understand why the Authority should require a certificate to be transferred in cases where the certificate is held by a legal entity, such as a corporation, partnership, or limited liability. Such entities are governed by articles of incorporation, by-laws and shareholders agreements, partnership agreements, and member agreements. We request the Authority to explain why its rule should supersede the legal processes of these legal entities.

The Authority's rule purports to apply only when one with a "controlling interest" in a certificate holder dies or becomes incapacitated. But the Authority defines the term "controlling interest" so broadly that the rule may apply when a corporate officer with no ownership interest dies or becomes incapacitated. We request the Authority to explain why it has defined the term "controlling interest" contrary to its common and approved usage. The proposed rule requires

the transfer of a certificate of public convenience, but it is triggered by the death or incapacitation of individuals within the organizational structure of a legal entity that may or may not have the power or authorization to transfer a certificate of public convenience. This renders the rule totally unworkable. Besides the practical problems with the rule, there appears to be no valid policy reason for requiring a transfer under many of the circumstances contemplated by this rule.

CHAPTER 1017. VEHICLE AND EQUIPMENT REQUIREMENTS

Subchapter A. General Provisions

To the extent it is determined that these provision apply to non-medallion taxicabs, we submit these comments.

Section 1017.3 Taxicab age parameters.

Section 5714(a) of the Parking Authorities Law provides that "[n]o vehicle which is more than eight years old shall continue in operation as a taxicab." The statute only applies to medallion taxicabs. Non-medallion taxicabs are not subject to any age restriction under Commission regulations, so long as they meet PennDot safety standard and other equipment standards established by the Commission. The Authority does not have the statutory power to change the age parameters for medallion taxicabs and has no statutory authority whatsoever to impose age restrictions on non-medallion taxicab, so long as they are able to meet PennDoT safety standards. Accordingly, the proposed regulation exceeds the scope of the Authority's enabling act.

Likewise, the Authority does not have the statutory authority to require that vehicles that are placed into service be less than one year old. In addition to being beyond the Authority's statutory powers, this regulation also imposes unduly burdensome compliance costs on carriers. We request the Authority to provide information as to how it concluded that this regulation would be revenue neutral.

Even if the Authority had the statutory power to impose this requirement, the compliance cost would be enormous, particularly for Germantown Cab, which registers more than 100 vehicles with the Authority. Germantown would have to replace its entire fleet with brand new Crown Victoria vehicles at a cost of several million dollars. Unlike medallion taxicab carriers, which can use their medallions as collateral for loans, non-medallion taxicabs have no access to collateral to finance the vehicle and equipment requirements the Authority proposes to impose on them.

Section 1017.4 Taxicab mileage requirements.

The Authority only has statutory power to impose age restrictions on medallion taxicabs as provided above. It may not impose mileage requirements on either medallion or non-medallion taxicabs as explained above. So long as a vehicle is able to pass PennDoT safety

standards and other reasonable standards imposed by the Authority, the Authority must pass a vehicle for inspection, regardless of its mileage and age, except as otherwise provided in the act.

In addition to the foregoing, there is an unreasonable financial burden associated with compliance with this provision. This provision will require vehicles that can meet all applicable safety standards to be retired before their useful life is over resulting in the imposition of unnecessary cost of vehicle replacement.

Section 1017.5 Basic Vehicle Standards

Section 5714(a) of the Parking Authorities Act requires the Authority to inspect medallions taxicabs prior to affixing a medallion to its hood. Section 5714(a) gives the Authority power to impose, by regulation, vehicle standards in addition to the safety standards required by PennDoT. This means that the Authority has the power to enforce PennDoT standards and other standards reasonable and necessary for the provision of quality taxicab service. It does not mean that the Authority may modify the PennDoT standards. In other words, the Authority may not change standards covered by PennDoT, but may only impose other standard not covered by PennDoT. For example, the Authority cannot require new parts to be installed to correct PennDoT safety violations if a used part complies with the standard. But the Authority may require handles in back seats to assist disabled or elderly passengers in entering or exiting the vehicle even though PennDoT has no such requirement.

Subparagraph (b)(2) and (3) require taxicabs to utilize the services of a dispatcher approved by the Authority and requires taxicabs to be equipped with an two-way radio and a mobile data terminal connected to a dispatch radio system approved by the Authority.

Section 5721 of the Parking Authorities Law requires all medallion taxicabs to utilize the services of a centralized dispatch service. The Authority does not have statutory authority to require non-medallion taxicabs to utilize these services nor to require the use of a two-way radio or mobile data terminal connected to a dispatch radio system.

Subparagraph (b)(12) requires the installation of protective barriers in vehicles. Section 5714(b) of the Parking Authorities Law requires a protective barrier for medallion taxicabs. Non-medallion taxicabs throughout the Commonwealth are not required to have protective shields. It is unduly burdensome to require non-medallion taxicabs to comply with this standards.

Section 1017.14 Taxicab numbering.

The parallel Commission regulation is 52 Pa.Code §29.71. The Authority's proposed regulation requires non-medallion taxicab carriers to number their vehicle sequentially beginning with the number 1. The Commission regulation also imposes this requirement. All non-medallion taxicabs are registered with the Commission in compliance with this regulation. But non-medallion taxicab carriers do not register all of their vehicles with the Authority because the Authority has been illegally imposing a per vehicle assessment on them for the last five years. In addition, the Authority imposes higher vehicles standards than the Commission. Consequently,

it is prohibitively expensive for non-medallion taxicab carriers to register all of the vehicles they need to provide service in their operating territories because they cannot afford to pay assessments on all of their vehicles and cannot afford to purchase vehicles that meet the Authority standards. It is impractical and burdensome for non-medallion taxicab carriers to comply with both numbering requirements because, when a vehicle is retired from Authority service it is still useful for Commission service. But when a numbered vehicle is retired from Authority service it must be re-numbered in order to be place into Commission service.

In addition to the foregoing, Commission and Authority regulations are in conflict as to the size of lettering and numbering on vehicles.

Subchapter E. IMPOUNDMENT OF VEHICLES AND EQUIPMENT

Section 5714(a) of the Parking Authority Law provides, in pertinent part, that "[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."

Violators of Section 5714(a) are treated differently, depending on whether they possess a certificate of public convenience issued by either the Authority or the Commission.

Section 5714(e), applies to taxicabs providing citywide taxicab service that possess certificates of public convenience issued either by the Authority or the Commission, but no medallion. It provides that operation of a certificated taxicab in violation of subsection (a) or authorizing or permitting such operation is a non-traffic summary offense. It also provides that offenders may be subject to civil penalties pursuant to section 5725 of the Parking Authorities Law, 53 Pa.C.S. §5725.

Section 5714(f), applies to taxicabs providing citywide taxicab service without either a certificate of public convenience issued by either the Authority or the Commission or a medallion. It provides that "[o]perating an unauthorized vehicle as a taxicab, or giving the appearance of offering call or demand service with an unauthorized vehicle, is a non-traffic summary offense in the first instance and a misdemeanor of the third degree for each offense thereafter." It also provides that both "[t]he owner and driver of a vehicle being operated as or appearing as a taxicab without a certificate of public convenience and a medallion are also subject to civil penalties pursuant to section 5725."

Section 5714(g) applies to taxicabs providing citywide taxicab service without either a certificate of public convenience issued by either the Authority or the Commission or a medallion. It provides that the Authority may "confiscate or impound vehicles, medallions, and equipment which are utilized to provide call or demand service without a proper certificate of public convenience in cities of the first class or which are in violation of the regulations of the authority."

Thus, the Authority has no power to seize or impound vehicles operated by carriers with certificates. The statute was intended to give the Authority power to seize or impound "gypsy" taxicabs.

CHAPTER 1053. STANDARD CLASSIFICATIONS OF LIMOUSINE SERVICE

Section 1053.1 Standard classifications of limousine service.

Section 5741(a) of the Parking Authority gives the Authority power, by regulation, to define categories of limousine service. The Authority has published several versions of its proposed regulations on its website. These versions are substantially different in several respects from the version that was submitted to IIRC. Of concern here is the fact that the Authority published a version of its proposed regulations that defined a category of limousine service called "Executive Car" which permitted limousines to operate on a mileage basis the way Executive currently operates. These regulations were contained under Subchapter B, which is now entitled "Luxury Limousine Service." The first section in the subchapter was §1053.11. For reasons unknown to Executive this subchapter was deleted from the proposed regulations submitted to IRRC. We request the Authority to explain why this subchapter was deleted.

Obviously, Executive has an interest in having the Authority promulgate regulations that would allow it to continue operating in the manner it has operated since 1992. We believe it is unreasonable for the Authority to regulate Executive out of existence without sufficient justification.

A. GENERAL PROVISIONS

Chapter 1001 – Rules of Administrative Practice and Procedure

The Administrative Agency Law, 2 Pa.C.S., Subchapter A, governs practice and procedure before Commonwealth agencies such as the Authority. There are regulations codified in Part II of Title 1 of the Pennsylvania Code, 1 Pa.Code, Part II, that also govern practice and procedure before Commonwealth agencies, but administrative agencies have the power to promulgate, amend and repeal reasonable regulations implementing the provisions of of the Administrative Agency Law. 2 Pa.C.S. §102. The Pennsylvania Public Utility Commission ("Commission") chose to exercise its power to promulgate regulations governing practice and procedure before it just as the Authority is proposing to do in this proceeding. We will contrast and compare both the general rules of administrative practice and procedure and those adopted by the Commission in commenting on the Authority's proposed regulations for practice and procedure where appropriate. If we have not commented on a proposed rule of administrative practice and procedure, it is because the proposed regulation is either substantially similar to a provision in the Commission's rules of practice and procedure or the general rules of practice and procedure applicable to Commonwealth agencies. Also, we have not commented on proposed rules of practice and procedure where the proposed regulation is not contained in the aforementioned rules where we have no objection to it.

Section 1001.1-Pupose

Subparagraphs (b) and (c) deal with the maintenance and expiration of existing rights held by members of the regulated industry. It is not clear why these provisions are in the chapter dealing with the rules of practice and procedure. But the greater concern here is how the Authority views it power over rights granted under certificates of public convenience. When the Authority uses phases such as "current and valid rights issued by the Authority" and "rights issued by the Authority through issuance of a waiver" the Authority demonstrates a fundamental misunderstanding of the nature of the rights granted under a certificate of public convenience ("certificate") and the Authority's power over those rights.

Section 1001.2 – Scope of subpart and severability

There are two problems with subparagraph (a). First, the Authority states that its rules of practice and procedure are intended to *supplement* the Administrative Agency Law, 1 Pa.C.S., Subchapter A. The Authority does not have the power to supplement a statute via regulation. It may implement or interpret a statute through it regulations, but it may not supplement a statute. Supplementation of a statute sounds like amendment of legislation which is the sole province of the General Assembly.

Secondly, the Authority states that its rules of practice and procedure are also intended to *supplement* the general rules of practice and procedure applicable to Commonwealth agencies contained in 1 Pa.Code Part II. Compare the Commission's regulation at 52 Pa.Code 1.1 which states that its rules of practice and procedure are intended to *supersede* 1 Pa.Code Part II. Does this mean that both sets of rules will apply? How will conflicts between the two sets of rules be resolved? If the Authority's rules of practice and procedure are intended to supplement existing rules, why is it necessary to propose rules that are substantially identical? Why not just propose rules that truly supplement existing rules?

Subparagraph (b) is unique to the Authority's proposed rules of practice and procedure. There is no corresponding rule in Title 1, Part II or Title 52 of the Pennsylvania Code. Beyond its uniqueness, the proposed rule usurps the judicial function of our appellate courts by defining the scope and impact of future judicial decisions reviewing the Authority's actions.

Section 1001.3 Liberal construction

The first sentence regarding the intended goal of liberal construction of the rules is substantially similar to 1 Pa.Code §31.2 and 52 Pa.Code §1.2, although the Authority seeks to resolve issues "efficiently" rather than "inexpensively." The second sentence regarding the power of the Authority or its presiding officers to disregard errors or defects of procedure when it does not affect substantive rights is similar to 52 Pa.Code §1.2; however, the concern here would be that the Authority may deny procedural rights

Section 1001.28 – Power of Attorney

This section pertains mainly to vehicle inspections. Non-medallion taxicabs are not subject to vehicle inspections by the Authority because their vehicles are inspected by the Commission. The Authority has proposed subjecting non-medallion taxicabs to inspection by it. In the event the Authority's regulations pertaining to inspection of non-medallion taxicabs goes into effect, non-medallion taxicab companies object to this proposed regulation on the ground that it is onerous and imposes an undue burden on non-medallion taxicab companies, particularly Germantown Cab Company. Unlike medallion taxicabs, which may only operate one vehicle per certificate of public convenience, non-medallion taxicabs may operate an unlimited number of vehicles. Most medallion taxicab companies hold no more than four certificates and can present their vehicles for inspection on the same day. But Germantown, which operates more than 125 non-medallion taxicabs, would have to present its vehicles for inspection every day for several weeks.

When it was conducting illegal inspections pursuant to its invalid regulations, the Authority implemented a power of attorney procedure similar to this proposed regulation. The process for Germantown proved onerous and unduly burdensome.

Section 1001.42 – Authority fee schedule.

We object to this proposed regulation for five reasons. First, the Authority has misplaced the proposed regulation in a subchapter on documentary filings, when it should be in a subchapter on the Authority's budget and fee process. Second, it does not contain an actual fee schedule. Third, it wrongly suggests that the Authority's annual budget and fee schedule is submitted "to the Legislature" for "approval." Fourth, the proposed regulation does not satisfy the statutory requirements of Section 5707 regarding notice of the proposed budget and fee schedule to taxicab and limousine holders. Fifth, the Authority has not proposed any other rules or procedures pertaining to its budget and fee schedule process.

The proposed regulation is buried in Subchapter E on Fees in the Authority's Rules of Administrative Practice and Procedure, where one would expect to find a provision on fees for documentary filings with the Authority. The parallel provision in the Commission's regulations serves that purpose and differs from the proposed regulation in that it contains an actual fee schedule for documentary filings with the Commission. The Authority regulation purports to be a provision pertaining to the fees for documentary filings, but it also serves a much more important purpose, which we will address below after addressing the apparent purpose of the proposed regulation.

To the extent the proposed regulation purports to be a provision pertaining to fees for documentary filings with the Authority, it should contain an actual fee schedule as the parallel Commission regulation does. Fees imposed by the Authority have a direct financial impact on the taxicab and limousine industry. They should be fair, consistent and reasonable. Excessive fees may affect substantive rights if they inhibit or preclude access to necessary procedures. Promulgation and adoption of fees through the statutory rulemaking process will help protect against unnecessary and burdensome costs for access to required procedures, promote stability and consistency in costs, and require the Authority to justify the imposition of new fees or

revision of existing fees. The Authority should promulgate a fee schedule for all of its routine fees and charges in its proposed regulations and not just for documentary filings.

The more important purpose served by the proposed regulation pertains to the Authority's statutory duty to provide notice to taxicab and limousine certificate holders of the Authority's annual budget and fee schedule. In terms of the structure and organization of the Authority's proposed regulations, this provision should not be contained in the subchapter on documentary filings. Rather, it should be contained in a separate subchapter pertaining to the procedures for the adoption of the Authority's annual budget and fee schedule. It is misleading to include this provision in a subchapter pertaining to documentary filings because it conceals the importance of the budget and fee schedule process, which has the greatest financial impact on the taxicab and limousine industry.

Section 5707 of the Parking Authorities Law, 53 Pa.C.S. §5707, which pertains to the Authority's budget and fee process, is a substantial reenactment of Section 2414 of the Public Utility Code, 66 Pa.C.S. §2414 (now repealed). But section 5707 of the Parking Authorities Law contains one important change from prior law. It requires the Authority to adopt regulations pertaining to notice to certificate holders of the Authority's proposed fee schedule for the upcoming fiscal year. Presumably, the Authority intends this proposed regulation to satisfy its statutory duty under Section 5707. But we believe the proposed regulation falls short of fulfilling the Authority's statutory duty.

Section 5705(a) pertains to the initial budget and fee schedule and subparagraph (b) pertains to subsequent fiscal years. Subparagraph (a) requires the Authority to complete an *initial* budget and fee schedule that includes all fees for initial issuance of medallions and for the transfer of medallions and all taxicab and limousine certificates of public convenience. No other fees for the *initial* fee schedule are specified in the statute. In subsequent fiscal years, the statute merely requires a fee schedule necessary to advance the purposes of the act.

Section 5707 statute requires the Authority to submit its initial and subsequent fiscal year budget and fee schedules to the appropriations committees in both houses of the legislature. The legislature does not "approve" the budget and fee schedule. Rather, the statute provides that the budget and fee schedule becomes effective, unless either the Senate or the House acts, by way of resolution, disapproves the budget and fee schedule within 10 legislative days. Thus, the budget and fee schedule does not have the force and effect of a legislative enactment, which must be presented to the floors of both houses, passed by a majority vote, and signed into law by the Governor. The process simply determines the effective date of the budget and fee schedule. The budget and fee schedule is, of course, still subject to judicial review for any reason it was subject to judicial review before it was submitted to the appropriation committees, other than compliance with this procedure.

The statute also requires the Authority to notify taxicab and limousine certificate holders of the budget and fee schedule for the upcoming fiscal year. The statute does not provide for a specific process by which to challenge the Authority's proposed budget and fee schedule. Presumably, by requiring the Authority to adopt regulations pertaining to notice, the General Assembly intended to give taxicab and limousine certificate holders a meaningful opportunity to

challenge the Authority's proposed budget and fee schedule by lobbying the legislature. Thus, the timing of the notice is of critical importance. There can be no meaningful opportunity to challenge the Authority's budget and fee schedule unless the Authority give notice of its budget and fee schedule on or before the date it submits it to the appropriations committees.

Beyond the timing of notice to taxicab and limousine certificate holders, the Authority has not proposed any other procedures for its budget and fee schedule process. There are no procedures to determine how regulatory expenses are to be allocated.

Insert argument here about how non-medallion taxicabs are not subject to Act 2004-94 because the General Assembly did not provide for the allocation of regulatory expenses between different categories of taxicabs.

Section 1001.51 – Service by the Authority

We have a minor concern with subparagraph (b), pertaining to forms of service by the Authority, that E-mail service may be made upon certificate holders and brokers who have not voluntarily provided an e-mail address to the Authority and consented to service via e-mail. Subparagraph (b)(3) provides that e-mail service may be made upon those who have registered an e-mail address with the Authority. But it also provides for e-mail service on certificate holders and brokers who have not done so.

With regard to subparagraph (d), pertaining to change of address, we believe it is sufficient for notification of a change of address to be provided "promptly" as set forth in the parallel Commission regulation, 52 Pa.Code §1.53, rather than within 48 hours. We object to this proposed regulation to the extent any liability would be imposed for failure to comply with the 48 hour period where actual notification occurred "promptly."

With regard to subparagraph (e), pertaining to alternate service, the proposed regulation permits the Authority to made alternative service via publication in a newspaper of general circulation. The term "general circulation" is not defined; however, we note that there are currently only two newspapers in Philadelphia most people would consider to be newspapers of general circulation: The Philadelphia Inquirer and the Philadelphia Daily News, which have a daily circulation of 342,000, and publish seven days a week in the case of the Inquirer and six days a week in the case of the Daily News. These newspapers cover news and issues of general interest to the residents of Philadelphia and its environs. In the past, the Authority has used the Philadelphia Tribune for notice and alternative service purposes. The Philadelphia Tribune, which has a daily circulation of 143,000 publishes three weekdays and Sunday and covers news and issues of particular interest to the African American community in Philadelphia. In fact, it identifies itself as the oldest African American newspaper in the United States. We have no objection to the Authority identifying the specific newspapers it intends to use for alternative service or other notices, but we believe the Authority is using the term "general circulation" in a way that is not commonly understood.

Section 1001.52 – Service by a party.

Subparagraph (a) differs from the Commission rule regarding service on a party in that it contains the clause "unless an alternative form of service is specifically provided by the act, this part or an order of the Authority." We do not understand why this additional language is necessary or what it refers to and would request clarification on this point.

Subparagraph (b)(1) pertains to personal service of documents in a proceeding before the Authority. Anyone should be able to serve a document in an Authority proceeding. There is no reason to place any restrictions on the person making service. It is completely pointless. This regulation has the potential to create unnecessary controversies over whether proper service has been made. There is no rational basis for such a restriction.

Subparagraph (c) pertains to the power of the presiding officer to limit service of documents to parties or individuals that state on the record or request in writing that they wish to be served. The purpose of the regulation is to eliminate the need to serve parties that do not "participate" in the proceeding. We do not understand the use of the term "participate" in this context. But all parties to a proceeding should be served unless they request on the record or in writing not to be served. There should be a service list for every proceeding and every party should be on the list, whether they "participate" or not, unless they request to be taken off the list.

Section 1001.57

Subparagraphs (a) and (b) pertains to the number of copies to be served on the presiding officer and parities. It differs from the Commission's rule at 52 Pa.Code §1.59 in that it includes exceptions to the rule where there is an order by the Authority or another rule that requires a different number of copies. The Authority should not be micromanaging issues such as the number of copies to be served on a presiding officer or a party. This is the reason that the Authority has rules. If the presiding officer deems it necessary for additional copies to be served on a party, there is nothing to prevent a presiding officer from so ordering. The additional language is unnecessary and only undermines the clarity and certainty of the rule.

Subchapter G. PENALTY

This subchapter does not appear in the Commission's regulations; however, it pertains to a very important subject: the power of the Authority to impose penalties for violation of the statute and its regulations. These penalties may only be imposed in the context of formal proceedings.

Section 1001.61 – Penalties

All penalties that the Authority is authorized to impose should be contained in a schedule incorporated into its regulations. In addition, each regulation establishing a standard or requirement should contain a penalty provision so that the consequences of violating it are clear. The $1,000 limit on penalties is statutory and need not be incorporated into these regulations. But the specific penalties to be imposed for violations of specific sections of the proposed regulations should be set forth with clarity, especially with regard to the grounds for suspension

or cancellation of rights. The Authority may not, as a sanction for violation of its regulations, modify operating authority.

Subchapter H. MATTERS BEFORE OTHER TRIBUNALS

Section 1001.71 Notice and filing of copies of pleadings before other tribunals.

We have no objection to this proposed regulation other than it requires filing with the Director. We believe that all documentary filings with the Authority should be through the Clerk's office to ensure that it becomes part of the Authority's official records.

PUBLIC ACCESS TO AUTHORITY RECORDS

Commission regulations contain a subchapter on public access to Commission records. 52 Pa.Code §§1.71 to 1.77.

We request an explanation from the Authority as to why it has omitted this subchapter in its proposed regulations.

We believe that it is imperative that the Authority adopt rule regarding public access to its record of formal proceedings, fiscal records, as well as tariffs, minutes of public meetings, and annual reports. We also believe that it is imperative to establish procedures for access to other records.

Subchapter I. Amendments or Withdrawal of Submittals

Section 1001.81 Amendments

The parallel Commission rule appears at 52 Pa.Code §33.41 and is more straightforward and grants a liberal right to amend a pleading or submittal before the Commission. The Authority's proposed rule contains vague conditions to the acceptance of amended pleadings or submittals and it is not clear what conditions would prevent amendment. The first clause of the regulation provides: "Except as specifically limited by another section of this part ..." but does not specify what other sections may limit the right to amend a pleading or submittal. We request a clarification on this point.

In addition, the proposed rule adds the sentence: "The Authority may waive time restrictions as to filing dates in the interest of justice." There is no reference as to what time restrictions may be implicated or why a waiver would be necessary. We oppose expansive rights to grant waivers of rules of administrative practice and procedure on the ground that it tends to render rules meaningless if they can be waived "in the interest of justice. We request clarification as to the specific time restrictions the Authority is referring to in this section.

Section 1001.82 Withdrawal or termination of uncontested matter or proceeding.

Once again, the parallel Commission rule, which appears at 52 Pa.Code §33.42, grants a liberal right to withdraw uncontested matters before decision by the Commission upon a motion, which may be granted or denied as a matter of discretion.

The Authority's proposed rule is similar but it requires withdrawals to be filed with two different offices depending of the nature of the proceeding. As noted above, all documentary filings with Authority should be filed with the Clerk's office, which should be the central repository for all matters of record with the Authority.

The Authority also specifies that any withdrawal will be considered a withdrawal with prejudice. A withdrawal with prejudice involves a loss of the right to act in the future and should only used as a sanction for abusive conduct or with the consent of the party withdrawing. Requiring withdrawal with prejudice is a violation of due process.

The proposed rule also provides for the withdrawal to become effective 15 days after it is filed. We do not understand why the withdrawal should not become effective immediately and request the Authority to explain the reason for this provision.

The proposed rule also provides that a matter will be considered withdrawn "unless otherwise provided by statute" but does not specify what, if any, statutory provision would prevent a matter from being withdrawn. We request the Authority to specify which statutory provisions may affect a withdrawal.

The proposed rule also provides that a matter will considered withdrawn unless another party files a petition contesting the withdrawal and then does not specify what happens if another party contests a withdrawal. We request the Authority to clarify the procedure in this regard.

The proposed rule also provides that a matter will be considered withdrawn unless withdrawal would "harm the public interest." We do not know what this means, but we would suggest that the Authority consider amending the proposed rule to all the Authority to approve or deny the withdrawal as a matter of discretion, which is easier to understand.

Subchapter L
UNOFFICIAL STATEMENTS AND OPINIONS BY AUTHORITY PERSONNEL
Section 1001.112 Notice of Proposed Rulemaking

The proposed rule is oddly out of place in comparison with the Commission's rules and the General Rules of Administrative Practice and Procedure. The parallel provisions appear in the Chapter on Formal Proceedings under the Subchapter on Hearings. See 52 Pa.Code §5.211 and 1 Pa.Code §35.104. Both of these rules pertain to hearings before an agency in connection with rulemaking proceedings. But the Authority's proposed rule does not appear to contemplate hearings in connection with its rulemaking proceedings, unless it grants a petition filed by an interested party setting forth the reasons for having a hearing. It appears that the rule gives the Authority discretion to deny such a petition. We believe the proposed rule reflects reluctance on the part of the Authority to subject its actions to scrutiny by the regulated industry and the public.

We suggest that the Authority consider amending the rule to conform to the parallel rules cited above and reflect on the value of public input into rulemaking proceedings.

CHAPTER 1003. SPECIAL PROVISIONS
Subchapter A. Temporary Emergency Orders
Emergency Relief

Section 1003.1 Definitions

The parallel Commission rule is 52 Pa.Code §3.1 and is similar to the proposed rule, except that the propose rule excludes from the definition of "emergency" situations that present a clear and present danger to life or property that are subject to a pending proceeding before the Authority. We recommend that the Authority consider amending the proposed rule so that it may employ emergency procedures to prevent the loss of life or property, even if the matter is subject to a pending proceeding.

Also, the Commission's definition of "Emergency order" permits any single commissioner or the Commission as a whole to issue an emergency order, while the Authority's proposed rule limits issuance of an emergency order to the Chairman of the Board. We recommend the Authority consider giving any Board member the power to issue an emergency order to increase access to parties who may address an emergency.

Section 1003.12 Disposition of ex parte emergency orders.

The parallel Commission rule is 52 Pa.Code §3.3 and is similar to the proposed order, except that the proposed order does not permit board members other than the Chairman to issue emergency orders. As indicated above, we recommend that the Authority consider giving any Board member the power to issue an emergency order to increase access to parties who may address an emergency. Also, it should make no difference whether there is a case or controversy at the time the Authority considers ratification, modification or rescission or an emergency order. Some official action should be taken after an ex parte order is entered as a matter of course. If there is no case or controversy when the Authority considers the ex parte order, then it should act appropriately under the circumstances. Finally, as the Commission rule provides, service of the ex parte order should be effected as expeditiously as practicable given the fact that it is an emergency. Normal service is not adequate in the event of an emergency.

Section 1003.13 Hearings following issuance of emergency orders.

The parallel Commission rules is 52 Pa.Code 3.4. Both rules consider a presiding officer's stay of an emergency order to be a recommended decision to be considered by the Authority at its next scheduled hearing. The Authority's rule refers to its rules on filing exceptions to recommended decisions, which indicates that a presiding officer's order staying an emergency order will become final without Authority action unless exceptions are filed. The Authority should consider eliminating the need for the filing of exceptions in the context of emergency proceedings. As noted, the Authority act to ratify, modify or rescind an emergency

order issued on an ex parte basis regardless of whether a presiding officer has stayed the order and regardless of whether exceptions have been filed.

INTERIM EMERGENCY RELIEF

Section 1003.22 Hearing on petitions for emergency orders

The parallel Commission rule is 52 Pa.Code §3.6a, which requires a hearing to held in 10 days after the filing of a petition for interim emergency relief as opposed to 20 days as provided in the proposed rule. Twenty days seems too long a period for consider emergency relief. The Authority should consider conforming the rule to the Commission rule or adopting a more flexible standard.

Section 1003.23 Issuance of interim emergency orders.

The parallel Commission rule is 52 Pa.Code §3.7, which requires the issuance of an order within 15 days of the filing of a petition for interim emergency relief as opposed to 25 days as provided in the proposed rule. Once again, the Authority should consider a shorter time frame for consideration of emergency relief. Also, the Authority should consider requiring service of an order granting or denying a request for interim emergency as expeditiously as possible as provided in the Commission rule.

Section 1003.25 Authority review of interim emergency orders.

The parallel Commission rule is 52 Pa.Code §3.10, which provides that the presiding officer will certify the question of the grant or denial of a petition for interim emergency order as a material question pursuant to the rule pertaining to review of interlocutory orders of a presiding officer. The Commission rule pertaining to review of interlocutory order, 52 Pa.Code §5.03 permits, but does not require, the parties to submit briefs to the Commission for its consideration and sets a 30 day time limit for Commission action. The proposed rule treats the order of the presiding officer granting or denying a petition for interim emergency order as a recommended decision, which means the presiding officer's decision becomes final if a party against whom the order is entered fails to file exceptions to the order. The Authority's rules also set no deadline for Authority action. We recommend that the Authority consider adopting a rule that provides for Authority review of an order granting or denying interim emergency relief within a certain time frame regardless of whether a party files exceptions or brief as part of the proceeding.

OUT OF SERVICE

Section 1003.31 Definitions

The parallel Commission regulations pertaining to placing a vehicle out of service are contained in 52 Pa.Code §31.31-34, which is the subchapter on vehicle requirements. Commission regulations permit enforcement officers to place a vehicle out of service when a field inspection reveals that it is not in compliance with vehicle equipment and safety standards.

The Authority's proposed regulation pertaining to placing a vehicle out of service is oddly placed in its rules of administration practice and procedure rather than in the subchapter on vehicle requirements.

Respectfully submitted,

/s/

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