



BEFORE THE PHILADELPHIA PARKING AUTHORITY

**In re: Philadelphia Taxicab and
Limousine Regulations**

Docket No. PRM - 10-001

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INTRODUCTION

Richard M Meltzer, Esq. submits these Comments to the Authority with the hope they will provide some insight to modify the proposed Regulations to be more equitable and less onerous.

I am a licensed attorney and have experience representing numerous taxi providers over the past many years. In the past, I have been counsel to the former Trustee of the Philadelphia Self-Insurance Plan (PAT SIP), counsel to a group of taxi drivers protesting the proposal to install airport transportation in competition with the taxi drivers, and counsel to Penn Cab (now Germantown Cab) in connection with litigation before the PUC in 1995-6. This litigation (In Re Application of Penn Cab A-00110733) involved a case of first impression under the Medallion Act of 1994. The issue was whether the passage of the Medallion Act prohibited Penn Cab, (Germantown Cab) from operating in its limited territory since only Medallions had city wide rights. In that litigation the testimony of numerous

residents helped the PUC to conclude that limited rights cabs were not eliminated by the Medallion Act because of the public need for such service in an underserved area and that the Medallion Act did not apply to such carriers. As a result, PUC regulations differed for medallions and non medallion cabs. The referenced litigation is one reason for my opinion that Act 94 was not meant to apply to these providers.

Recently, I have represented dispatchers, medallion operators, drivers, and partial rights providers before the PPA and in some appeals. I am representing a group of drivers in Commonwealth Court contesting the legality of a former PPA regulation dealing with exclusion because of a criminal record. This issue is discussed more fully in my comments below.

In addition, in the past two years I have defended numerous medallions, drivers, and partial rights providers in civil litigation involving personal injury and property damage lawsuits on behalf of an insurance carrier. As a result, I am familiar with the personal injury practice. I concur with Mr. Hambrecht's comments expressed to the Authority involving the insurance proposal.

As a result, I believe my observations and comments should be read with the knowledge of my experience and my desire to see the taxi industry be regulated within an appropriate and fair regulatory system. Comments from opposing viewpoints or those from neutral observers are able to provide needed insight

to a party which may not have considered the problems, consequences, and issues certain proposals raise.

My references are to sections of the proposed regulations cited in the Pa. Bulletin although they appear to differ from the cited sections in the PPA regulations. Hopefully this will not cause too much confusion.

1001.10.

Presiding officer—

A member or members of the Authority's Board, or other person designated (i) by the Authority or this part to conduct proceedings. (relating to This definition supersedes 1 Pa. Code § (ii) definitions).

to a party which may not have considered the problems,

COMMENT

and consequences, and issues certain proposals raise.

See comments below in reference to Adjudication Department.

The fact that the hearing officer is either a member of the Board or one appointed for a undefined term is, at the very least, an appearance of impropriety. Despite regulations imposing restrictions on discussions between the hearing officer and Authority counsel, the appearance is still tainted.

The Budget reflects the amount of fines and penalties collected by the TLD. I believe the Budget contains a salary for the presiding officer and this alone may be a conflict.

The lack of any detail of the selection process contributes to the appearance of impropriety. Is the function performed full time or is it only a part time function?

The office of the presiding officer is believed to be located in the same building which houses the entire TLD staff. The regulations do not prohibit such an arrangement. The revenue collected by the TLD from the industry approximates \$ 5,000,000 annually. To have the entire industry subject to potential sanctions including loss of employment, rights, and funds by a process so tainted with potential and real conflicts raises serious due process concerns in my opinion.

Adjudication Department. 1003.73.

(a) *Designation.* The TLD will include an Adjudication Department to provide for the administration of hearings and appeals related to enforcement actions and as otherwise provided for in the act, this part or an order of the Authority.

(b) *Standing presiding officers.* The Authority will appoint at least one individual to the Adjudication Department as a standing presiding officer to facilitate the purposes of the act and this part related to hearings and appeals. The Authority may assign additional tasks to the Adjudication Department, including the obligation to produce a recommended decision under 1005.201—1005.204 (related to recommended decisions).
§§

(c) *Qualifications.* A presiding officer appointed to the Adjudication Department shall have been admitted to practice law before the Supreme Court of Pennsylvania for at least 7 years prior to the date of designation.

(d) *Additional staff.* The Executive Director may designate additional Adjudication Department staff necessary to provide for the orderly operation of the Department, including court reporters.

35.185—35.187 (relating to Subsections (a)—(d) supersede 1 Pa. Code §§ (e) designation of presiding officers; a disqualification of a presiding officer; and authority delegated to presiding officers

COMMENT

I object to the selection of a presiding officer for several reasons.

The PUC has a procedure for selection of ALJ's that instills confidence in an impartial and fair proceeding. This does not. There is nothing in the selection process that contains the hint of impartiality. The Authority selects the person to be employed whose only criteria is a 7 year experience as a lawyer. The presiding officer is a member of the TLD Adjudication Department, presumably works in an office at TLD headquarters and obviously owes allegiance to his employer.

The proposed regulations seek to control an industry containing more than 1700 cabs and additional limousines with more than 250 pages of regulations. For the most part, the drivers are individuals seeking to support themselves in a low paying and risk filled occupation. Drivers are subjected to regulations where violations could result in fines and loss of a job. To many of these drivers, the entire judicial process is an unfamiliar experience. To subject the owners, drivers, brokers, and dispatchers, and others to a system where the presiding officer is selected by the party seeking to impose sanctions does nothing to instill confidence in our system of justice.

No explanation is offered as to the selection process. There are numerous administrative agencies in the Commonwealth with judicial officers. Has the Authority studied any of their process and procedures on this topic or other relevant subjects? The perception alone is sufficient reason to change the presiding officer process.

1001.28. Power of attorney.

A certificate holder may be represented by one individual (a) attorney-in-fact at certain Authority appointments.

One individual attorney-in-fact may execute certain documents approved (b) by the Authority on behalf of a certificate holder.

An attorney-in-fact shall be a competent adult individual fluent in the (c) English language. An individual will be deemed ineligible to serve as an attorney-in-fact if he is unable to clearly respond to Authority investigations and comply with the reporting requirements of this part.

The Authority will maintain a list of appointments at which a (d) certificate holder may be represented by an attorney-in-fact and the list may be obtained on the Authority's web site at www.philapark.org/tld.

The power of attorney identifying an attorney-in-fact must be drafted in (e) compliance with the laws of the Commonwealth and display the original notarized signature of a person authorized to so act on behalf of the certificate holder.

A power of attorney may not identify an attorney-in-fact who is ineligible (f). 1011.5 (relating to to own Authority issued rights as provided in § ineligibility due to conviction or arrest). The certificate holder shall confirm that the attorney-in-fact is eligible to serve under this part.

The Authority may require as a condition of accepting a power of (g) attorney that the designated attorney-in-fact file a certified criminal history report for the Commonwealth and any state or country in which that individual has lived during the last 5 years.

COMMENT:

I object to the time limitations pertaining to the 1 year period for a power of attorney. The power is an agreement between two parties and this limitation interferes with their ability to establish their own terms. If the one giving the Power authorizes that the Power exist until withdrawn or for a specified time period, the PPA has no reason to interfere.. There are instances where a

potential seller permanently leaves the country and provides a Power after executing an agreement of sale. For unrelated reasons the transfer may be unduly delayed. Under this scenario the transaction may never be completed because the Power lapses after one year and the seller cannot be contacted to return. This has occurred in one instance still pending before the PPA. If this regulation existed, the transaction would fail to close.

In addition, it is objected that the Authority restricts the representation of a Power because the person may be otherwise ineligible to own a certificate. It is unduly restrictive and interferes with the ability to sell, operate, or represent the interests at the Authority.

The Authority should consider cancelling this regulation or providing some reasonable limits to the contents of a Power that are acceptable. Maintaining the proposed regulation may cause undue hardship. It is possible that at the time the Power was given the holder of the Power had not been involved in any conduct causing his ineligibility, but subsequent thereto he becomes ineligible. If it is difficult or impossible to obtain a substitute, hardship results.

1001.43 Authority fee schedule.

The Authority will issue a new fee schedule for each fiscal year, (a) subject to approval of the Legislature, under section 5707(b) of the act (relating to budget and fees).

The Authority will provide notice of the new fee schedule by email to (b) each certificate holder as required under section 5707(b) of the act. The current fee schedule may be obtained from the Authority's web site at www.philapark.org/tld.

COMMENT:

I interpret this language as not providing notice prior to any fees being imposed. The ability to change fees each year should only be allowed once the industry is provided notice and opportunity to comment. It is my opinion that the magnitude of establishing fees is tantamount to a change in regulations because the entire industry is impacted by fees. To do so without any study or notice to the industry for its input is improper.

In my opinion, the industry may be more accepting of new proposals and financial requirements if they were confident the proposals were the result of some analysis from all sources rather than apparent guesswork.

1001.61. Penalties.

(a) *Monetary penalty range.* If a penalty has not been otherwise assigned to a violation of any provision of the act, this part or an order of the Authority, the penalty applicable to the violation may be not less than \$50 and not greater than \$1,000.

COMMENT

The regulation fails to make it clear that no penalty can exceed the sum of \$ 1,000. Any penalty exceeding this amount is illegal under Act 94. The regulation must set forth this limitation as members of the industry should be aware of it. No penalty for any violation should exceed this sum.

1001.111.Unofficial statements and opinions by Authority

Statements contained in formal opinions of the Authority or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Authority members, presiding officers, legal counsel, employees or representatives of the Authority and reports drafted by Authority departments are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Authority.

COMMENT

The regulation is unclear. Whether or not a decision contains dicta is for a court to decide. The regulation should not bind a court from deciding a matter even if the prior decision contains dicta. This regulation appears to attempt to limit the power of a court by advising what it can and cannot decide and on what basis. No rationale is set forth.

Definitions. 1003.31. Out of Service

1003.32 (relating to out of service designation), have the following meanings, unless the context indicates otherwise:

Out of service—Immediate and temporary prohibition from the exercise of rights granted by the Authority under the act due to a public safety concern. An out of service designation will be narrowly tailored to create the most limited reduction of rights necessary to protect the public interest.

Public safety concern—Behavior of an individual or condition of a vehicle or equipment which violate the act, this part or an order of the Authority and which have an immediate and direct adverse impact upon the orderly operation of taxicabs and limousines in Philadelphia or which present a direct threat to public safety. For example, a limousine with a broken windshield, a taxicab with inaccurate colors and markings or a taxicab driver subject to a police arrest warrant may each result in an out of service designation.

COMMENT

The two above definitions are overly broad and ambiguous. The standard does not provide any guidance. Almost any alleged violation can fit within this definition and it provides the TLD officers with excessive authority to impose such drastic remedies.

It is suggested that specific violations be listed to impose such a remedy. Since the driver is an independent contractor and the owner has a limited control over the driver's conduct while he is operating (the most critical factor in an independent contractor Relationship) it is unjust to place a vehicle out of service for the behavior of a driver.

The placing of a vehicle out of service should allow the vehicle to be driven to its facility.

Violations perceived to cause a threat to public safety without more guidance than the two examples are not sufficient.

To prohibit a driver from operating when subject to an arrest warrant, without more, is unfair and unduly harsh. There may be reasons for the warrant that have no relationship to driving. The driver may be unaware of the warrant; the warrant may be for child support or plain error. To impose this sanction without any conviction, exploration of circumstances, or inquiry or hearing is unjust and interferes with a person's ability to earn a living, has financial consequences to the owner, and ignores the presumption of innocence in our society.

It would appear more equitable if the respondent is requested to present details of the circumstances before the remedy is enforced. A fair procedure could establish time parameters.

To prohibit a driver from operating when subject to an arrest warrant, without more, is unfair and unduly harsh. There may be reasons for the warrant that have no relationship to driving. The driver may be unaware of the warrant; the warrant may be for child support or plain error. To impose this sanction without any conviction, exploration of circumstances, or inquiry or hearing is unjust and interferes with a person's ability to earn a living, has financial consequences to the owner, and ignores the presumption of innocence in our society.

Conduct. 1003.76.

Trial Counsel representing the Enforcement Department, or an employee (a) involved in the hearing process, may not discuss the case *ex parte* with a presiding officer assigned to the case, the General Counsel or an attorney assigned to the case by the General Counsel.

A presiding officer, the General Counsel or an attorney assigned to the (b) case by the General Counsel or a member of the Authority may not discuss or exercise a direct supervisory responsibility over any employee with respect to an enforcement hearing with which the employee is involved.

If it becomes necessary for the General Counsel or an attorney appointed (c) by the General Counsel or a member of the Authority to become involved on behalf of the Authority in any formal proceeding, the General Counsel or an attorney appointed by the General Counsel or the member of the Authority involved shall be prohibited from participating in the adjudication of that matter.

COMMENT

In my opinion, the above regulation fails to overcome any appearance of impropriety. The presiding officer sees the enforcement officers and trial counsel on a regular basis; this is not a situation where a judicial officer decides on credibility of numerous different law enforcement officers. Here, there is a limited number who bring cases on a regular basis. It would be difficult for a presiding officer to rule on credibility issues in this regard against the Authority.

The Authority fails to state the term of appointment, which signifies the presiding officer may serve at the whim of the those appointing him. The fact the Board is involved with the selection process also raises concerns. Perhaps there should be a different selection process.

The entire process requires appointment by others outside the Authority and owing no allegiance to the Board members. Otherwise, the judicial system is a mockery.

1005.11. Formal complaints generally.

Formal complaints averring an act done or omitted to be done by a person (a) subject to the jurisdiction of the Authority, in violation, or claimed violation of a statute which the Authority has jurisdiction to administer, or of this part or an order of the Authority, may be filed with the Authority by:

The Enforcement Department. (1)

The Office of Trial Counsel. (2)

The PUC. (2)

Philadelphia law enforcement or licensing officials, as provided under (3), section 5705(b) of the act (relating to contested complaints)

Otherwise, the judicial system is a mockery.

COMMENT

The section does not provide any guidance for when a complaint is filed by one of the listed authorities rather than a citation. The regulation should set forth criteria when a case gets filed by a particular office or division.

It is suggested that the procedure be similar to the PUC.

In addition, it does not allow for discovery by way of depositions.

1005.41. Answers to complaints, petitions, motions and other filings

(a) *Time for filing.* Unless a different time is prescribed by statute, the Authority, or the presiding officer, answers to complaints, petitions, motions and other filings requiring a response shall be filed with the Clerk and served upon all other parties within 20 days after the date of service.

COMMENT

The failure to file a timely response should not result in any default unless a 10 day Notice of Intent to Default is served on the respondent.

§1005.141 Admissibility of evidence.

In oral and documentary proceedings, neither the Authority nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings.

In the discretion of the Authority or presiding officer, evidence may be (b) excluded if:

1005.142.

The Authority or presiding officer will rule on the admissibility of (a) evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

1005.143. Control of receipt of evidence.

The Authority or presiding officer has all necessary authority to (a) control the receipt of evidence, including the following:

Ruling on the admissibility of evidence. (1) The Authority or presiding officer will

Confining the evidence to the issues in the proceeding and impose, when (2) appropriate:

Limitations on the number of witnesses to be heard. (i)

Limitations of time and scope for direct and cross-examinations. (ii)

Limitations on the production of further evidence. (iii)

Other necessary limitations. (iv)

The Authority or presiding officer will actively employ these powers to (b) direct and focus the proceedings consistent with due process.

COMMENT

The above sections relating to the role of 'the Authority' in determining admissibility of evidence are improper.

As stated, these regulations appear to provide the Authority who is involved in a hearing with the role of a judge. In filing complaints and in hearings the opposing party is the Authority. How can the opposing party be permitted to perform the function of a presiding officer? How can the public interest be served and justice and fairness result under this procedure?

1005.143 permits the Authority to determine the admissibility of evidence, the scope of cross examination, testimony, evidence etc. This is the role of a presiding officer.

Objection is made to all regulations allowing for the Authority's role to substitute for a presiding officer or other judicial officer.

The perception alone warrants this retraction.

1005.151.Oral examination.

Witnesses shall be examined orally unless the testimony is taken by (a) deposition as permitted by the Authority or presiding officer ...

COMMENT

See above. The process must permit *either* party the opportunity to depose witnesses or the other party. This proposed regulation only gives the Authority the right to decide if a deposition is acceptable.

1005.181.Designation of presiding officer.

When evidence is to be taken in a proceeding, either the Authority, a (a) 1003.73(b) (relating to standing presiding officer appointed under § Adjudication Department) or an Authority representative appointed according to 1005.182 (relating to qualifications), may law and qualified as provided in § preside at the hearing.

Qualifications. 1005.182. §

1005.181 An authority representative appointed as provided in § (a) (relating to designation of presiding officer) will be one of the following:

A member of the Authority. (1)

The Director. (2)

COMMENT

No member of the Authority should be permitted to act as a presiding officer in a hearing involving the Authority. No rationale or clarification are supplied to explain this blatant conflict of interest which violates the basic due process concept. The regulation needs to be clarified if the intent is not as appears to be stated herein.

1011.4. Annual assessments and renewal fees.

(a) *Assessments and renewal fees.* The owners of rights issued by the Authority shall pay an annual assessment or renewal fee in an amount established each year under section 5707(b) of the act (relating to budget and fees) and as 1001.43 set forth in the Authority's annual fee schedule as provided in § (relating to Authority fee schedule).

(b) *Payment of assessments by certificate holders.* Except as provided in subsection (c), the annual assessment for certificate holders is due on or before June 15 of each year.

(c) *Installment payments.* Upon request by a taxicab certificate holder, through the annual renewal form required under § annual rights renewal process), the Director may permit certificate holders to pay the assessment in two equal installments on or before June 15 and December 15 of each year.

Rights issued by the Authority will expire at the time an assessment payment becomes late and will be immediately placed out of service by the Authority in 1003.32 (relating to out of service designation).

COMMENT:

The payments should be 4 payments and not two. There is no reason to restrict the payments to 2 payments. The increased expenses contemplated by these regulations alone justify 4 payments.

Moreover, it is requested that the PPA perform some study or provide justification before the fees are determined.

The industry should be notified prior to the issuance of the fee schedule and prior to presentation to the legislature. The industry should be given the opportunity to comment.

Given the drastic remedy of a late payment of a fee, there should be grace period for excusable tardiness of 5 days or excusable neglect.

1011.5. Ineligibility due to conviction or arrest.

Except as provided in subsection (e), a person is ineligible to own any (a) interest in any right issued by the Authority if the person, or a person having a controlling interest in the person or a key employee, has been subject to a 1011.2 (relating to definitions) in the past 5 years conviction as defined in § and for 6 months from the date the convicted person completes the sentence imposed, including incarceration, probation, parole and other forms of supervised release.

In the event a regulated party owning a transferable right becomes (b) ineligible to hold rights issued by the Authority due to a conviction, the regulated party shall immediately cease use of the rights and initiate the sale of the rights to an eligible person as provided in Chapter 1027 (relating to sale of rights) within 180 days of the conviction.

A regulated party shall inform the Director within 72 hours of being (c) 1011.2. subject to an arrest or conviction as defined under §

In the event a criminal prosecution is initiated against a regulated (d) 1011.2, the party for a crime that may lead to a conviction as defined in § Enforcement Department or Trial Counsel may initiate a formal complaint against 1005.11 (relating to formal complaints the regulated party as provided in § generally) and seek the immediate suspension of rights pending the conclusion of the criminal proceedings.

A person subject to an order of Accelerated Rehabilitative Disposition (e) shall be ineligible to own any interest in any right issued by the Authority until the terms of the order have been completed.

COMMENT:

This section is illegal and unfair. It violates due process and is contrary to state law.

The PUC regulation provides at Title 52 Pa. Code Chapter 29.505:

(a) Criminal history record required. A common or contract carrier may not permit a person to operate a vehicle in its authorized service until it has obtained and reviewed a criminal history record from the Pennsylvania State Police and every other state in which the person resided for the last 12 months.

(c) Disqualification. 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.* (emphasis supplied)

The PPA must comply with Title 18 Pa. C. S. Section 9124. This section provides, in relevant part, as follows:

§ 9124. Use of records by licensing agencies.

(a) State agencies.--Except as provided by this chapter, a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the *convictions shall not preclude the issuance of a license, certificate, registration or permit.*

(b) Prohibited use of information.--The following information shall not be used in consideration of an application for a license, certificate, registration or permit:.....

(5) *Convictions which do not relate to the applicant's suitability for the license, certificate, registration or permit.*

The regulation permits the PPA to prevent a person from working without due process, without any individual evaluation, and for a conviction without regard to suitability to operate cab, an acknowledged low paying occupation. Moreover, the regulation goes even further. It considers arrests for what constitutes summary offenses to disqualify a person without even a conviction.

"The Commonwealth has consistently interpreted Article I, Section 1 of the Constitution to include an individual's right to engage in any of the common occupations of life." Hunter v. Port Authority of Allegheny County, 277 Pa. Super. 4, 419 A.2d 631 (1980), Adler v. Montefiore Hosp. Ass'n of Western Pennsylvania, 453 Pa. 60, 311 A.2d 634 (1973), and Gambone v. Commonwealth, 375 Pa. 547, 101 A.2d 634 (1954). In Adler, supra, the Supreme Court stated: "[A] law which purports to be an exercise of the police power must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained." Adler, 453 Pa. at 72, 311 A.2d at 640 (quoting Gambone, 375 Pa. at 551, 101 A.2d at 637).

"We cannot assume that the legislature intended such an absurd and harsh result.... Such a result runs afoul of the deeply ingrained public policy of this State to avoid unwarranted stigmatization of and unreasonable restrictions upon former offenders." (Johns Vending at 494-95, 309 A.2d at 362).

Since the regulation itself bars persons from driving cabs even when not convicted, its provisions contain inconsistent statements. Not only does any felony conviction apply- without regard to suitability to perform, but it adds a provision barring a person when there has been only an arrest for a summary offense. There is no rationale to this. Because most ARD cases involve summary offenses or perhaps a minor misdemeanor charge, until the charges are dismissed the driver is barred. There is no individual analysis regarding the charges or evaluation of the circumstances. In addition, a person arrested for other offenses, even though on bail, is punished as a matter of law and presumed guilty because he is barred from driving a cab while contesting the charges. The inability to work would only cause additional strain on the courts because the driver may then require court appointed counsel.

These proposed regulations are inconsistent with PPA regs. For those drivers under both PPA and PUC, such as partial rights operations, the dichotomy is more extreme and unsettled. Is the PUC more enlightened than the PPA? Does the PUC have less concern of public safety than PPA? A driver is eligible under PUC standards, but not when driving in the City of Brotherly Love.

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

Regulated persons and applicants for any right issued by the Authority (a) shall pay all assessments, fees, penalties, and other payments due to the Authority under the act, this part or an order of the Authority on schedule, unless the matter related to the payment is under appeal.

Regulated persons and applicants for any right issued by the Authority (b) shall remain current on the payment of parking violations and moving violations, unless the violation is under appeal.

Regulated persons and applicants for any right issued by the Authority (c) shall remain current on the payment of taxes due to the Commonwealth or City of Philadelphia, unless under appeal.

Regulated persons and applicants for any right issued by the Authority (d) shall hold and maintain a Business Privilege License issued by the City of Philadelphia and present a copy of the license to the Authority for inspection upon demand.

For purposes of this section, regulated persons and applicants includes (e) those with a controlling interest in the regulated person or applicant, or both, and key employees.

COMMENT:

The PPA seeks to control activities outside its jurisdiction.

There is no rationale to impose a sanction of not being able to own or operate a right because there is a delinquency in payment of obligations to another jurisdiction unrelated to the subject activity of medallions, cab operations or partial rights cabs.

The extension of this obligation to "key employee" is objectionable. The owner does not have that degree of control over employees and the fact a person is involved in business decisions which makes him a "key employee" should not be a basis to prevent employment or the imposition of severe sanctions.

How is the PPA planning to investigate the obligation? Will it require the presentation of business and personal tax returns? The evidence of payment? What are the sanctions? None are stated.

The requirement for a Business Privilege License issued by the City of Philadelphia is also outside the jurisdiction of the PPA. The appropriate City department is the one to enforce any such requirement. City Council imposes the ordinance to tax and not the PPA.

1011.11.Record retention.

Certificate holders and brokers shall maintain for 5 years all records (a) required under the act, this part or an order of the Authority, or otherwise kept in the ordinary course of business, in the English language and in a format capable of being easily produced to the Authority.

Both paper and electronic records shall be maintained in chronological (b) order by date and time of day.

Paper records required under this section shall be stored in dry areas (c) protected by a fire suppression system.

Electronic records required under this section shall be routinely copied (d) and stored at a location that is separate by at least 1 mile from the office where the record originated.

A regulated party shall produce records maintained under subsection (a) (e) to the Authority upon request. In the event the records require a special form of software to search or interpret, a regulated party shall make that software available to the Authority.

COMMENT:

This is ambiguous and excessive.

Why would electronic records that must be copied have to be stored at least 1 mile away but not paper records? Why

must records be retained for five years? What are the rational explanations for these requirements? It leads to additional expense and time consumption.

PARTIAL RIGHTS TAXICABS CHAPTER 1015

COMMENT:

Although proposed regulations seek to control such operations, there is a question whether or not Act 94 is applicable to partial rights cabs.

The history and language of the Medallion Law when compared to Act 94 supports the conclusion. That Act 94 applies only to medallion operations. The Medallion Law did not apply to partial rights cabs. Provisions in both laws contain verbatim recitations.

The imposition of these onerous and costly regulations is not in the public interest. However, for background of this Commission, it must understand that medallion cabs are property rights having substantial value, the ability to borrow money and use of the medallion as collateral. The partial rights operations have no such advantage.

Medallions operate in the entire City; partial rights have only a small segment serving under utilized areas.

Medallions are regulated by the PPA; partial rights can and are regulated by the PUC and PPA with inconsistent regulatory provisions, thereby creating confusion in

enforcement. Conduct violating proposed PPA rules is valid when a cab operates daily outside the City.

However, partial rights cabs admittedly face the same financial responsibility as medallions. In fact, for some reason the annual fees imposed on partial rights operators exceed that for medallions. There has been no study, evaluation, or justification-except perhaps a punitive one-for doing so.

Should Partial rights cab, such as Germantown Cab, cease to operate in the Philadelphia market , the residents it has served for decades will be harmed. Germantown Cab furnishes thousands of trips weekly; it doubts that medallions will even bother to supplant those trips. The trips are characterized by short trips to medical providers, food market, employment locations, and other similar such trips. Medallions are permitted but do not service the area.

In addition, partial rights cabs also are subject to control by the PUC as well as the PPA. The differences in regulations, enforcement, and financial requirements only cause confusion and costs to all parties. Conduct outside of Philadelphia that is legal is otherwise inside the City because of the regulatory scheme.

In my opinion, there are various reasons to segregate the regulatory scheme for medallions and partial right cabs:

1. The partial rights cabs operate under PUC and PPA jurisdiction;
2. Regulations applicable to medallions are not realistic for partial rights operations;
3. There is a question if Act 94 applies to partial rights cabs, especially in light of the clear intent for the predecessor statute, the medallion Law, application only to medallions;
4. Partial rights do not have property rights and cannot borrow funds to finance operations by pledging its certificates, but medallion cabs can do so;
5. Medallions have city wide rights, but not partial cabs;
6. If a partial rights operation ceases to exist in Philadelphia because of the issues created by the proposed regulations, the public will be harmed as will the employees working with partial right cabs, such as Germantown.

New or additional rights restricted. 1015.3. §

d. The number of taxicabs that may be operated by a partial-rights certificate (d) holder may not exceed the number registered by the certificate holder with the Authority on November 1, 2010.

COMMENT:

This provision is retroactive and unjust. Prior to the publication and before any passage of these regulations, the PPA has established a limit on what assets the partial

rights provider may possess. When Germantown Cab was acquired, and for decades, it was controlled by the PUC. Its operations outside Philadelphia are still controlled by the PUC, which has no such vehicle limitation. The confusion is obvious; the restriction on expansion is inconsistent with what Germantown Cab acquired when it purchased its initial authority to have an unlimited number of cabs. It is an illegal taking without due process. The date is artificial, provides no notice to the partial rights operator, and reduces the value of the asset. The restriction should be deleted.

The age requirements discussed below impacts Germantown Cab and other large scale partial rights cabs. These operations cannot pledge medallions as security for bank loans for the vehicles. At 100 vehicles the cost to Germantown to properly serve its area would exceed one million dollars and would place the operation out of business. Since many partial cab operations serve portions of a market not frequented by cabs in general, the public will be harmed if service ceases, especially in the Germantown area.

Because of so many differences between medallions and partial right operations, it is my suggestion that the PPA yield jurisdiction to the PUC on these cabs. In the alternative, the PPA's enforcement should be pursuant to the current PUC regulations. When one reviews the

numerous differences between these proposed regulations and current PUC regulations, it is apparent that a partial rights provider operating in both jurisdictions cannot survive facing the potential costs associated with current cars, fees, limited number of vehicles, imposed lease terms and dispatch operations. Partial rights cabs pay two state authorities. Under the Medallion Law, they were exempt from paying the medallion assessment and paid a PUC assessment based upon a different formula. Now, a partial right operation faces not only assessments from *both* the PUC and PPA, but the PPA assessment is now, for no reason, more than a medallion.

1017.3.Taxicab age parameters.

(a) *Method of age computation.* The age of a taxicab will be determined by comparing its model year to the current model year. A model year begins on the first day of each October. For example, a taxicab with a model year of 2008 would be 4 years old on October 1, 2012.

(b) *Taxicabs generally.*

Except as provided in paragraph (2) and subsection (c): (1)

A taxicab that is 5 years old or older is not eligible for inspection as (i) 1017.31 (relating to biannual inspections by the Authority) and provided in § shall be removed from taxicab service prior to the date of the next scheduled biannual inspection.

A vehicle may not be introduced for service as a taxicab, or reenter (ii) service after having been removed from taxicab service by the certificate holder if the age of the vehicle is 1 year old or older.

The age restriction will be discussed by other comments. It is contrary to Act 94, will increase costs substantially and

will be costly to the public as rates may be raised to allow the operation to afford the vehicle. See above.

One cost not believed to be considered in evaluating the new proposed regulations is the cost to carry property insurance for the new vehicle. Cab owners will be compelled to purchase insurance for damage to their new vehicle. Added to the other costs of additional insurance and other increased expenses, the cost to the industry is substantial.

Since the PPA has the ability to inspect twice annually, spot inspections, and mandate the certificate holder and driver maintain the vehicle, it is difficult to understand the basis for this provision, especially since parts are available.

1017.4. Taxicab mileage parameters.

(a) *Mileage at vehicle introduction.* A vehicle may not be first introduced for taxicab service with a cumulative mileage registered on the odometer as follows:

For a taxicab, 15,000 miles or more.

COMMENT

Similar to age restrictions there is no statutory authority for this regulation. For many years the Taxi cab industry has survived without this limitation. It will only cause increased costs, The fact the PPA inspects vehicles frequently makes the proposal unnecessary.

(b)*Maximum mileage.* A taxicab is not eligible for inspection as provided 1017.31 (relating to biannual inspections by the Authority) and shall be removed from taxicab service prior to the date of the next scheduled inspection when the cumulative mileage registered on the odometer is as follows:

For a taxicab, 200,000 miles or more. (1)

The mileage limitation will require replacement within a few years. Cabs are inspected and put out of service if not in good condition; replacement parts essentially refit a vehicle without regard to mileage. The 2 regulations will require constant replacement of vehicles.

(c)*Penalties.* A person determined to have intentionally manipulated or disconnected the odometer of a taxicab will be subject to a \$1,000 fine and a cancellation of rights issued by the Authority, or both.

COMMENT

The language of this section is ambiguous. There is no process described how a person is "determined" to have so acted. Depending on circumstances, doing so can be a federal or state criminal violation. A more precise regulation is needed.

1017.61. Control of vehicle.

Each certificate holder shall supervise the use of its taxicabs to assure that each taxicab is operated in compliance with the act, this part or an order of the Authority.

COMMENT

This provision is ambiguous and has legal consequences. The language may negate the status of the driver as an independent contractor since control of activities is a factor in making such determination. Supervision is limited because there is only a certain degree of supervision possible.

It is suggested that supervision not include the routes, trips, hours, or general operation once the daily operation of the lessees begins. It is difficult to supervise drivers away and out of sight of the base of operations.

1017.63. Wages, maximum lease amounts and uniform rates.

Upon investigation, the Authority will establish, by order, a uniform (a) rate for taxicab service within Philadelphia.

Upon investigation, the Authority will establish, by order, a prevailing (b) minimum wage rate for taxicab drivers and a maximum taxicab lease amount.

Upon investigation, the Authority may establish, by order, prevailing (c) employee benefits for taxicab drivers, in addition to a minimum wage.

COMMENT

There is no detail what will comprise the investigation. Why is this topic the only one scheduled for an investigation? Will the industry have an opportunity to provide its input?

The leases are agreements between drivers and owners. The regulations insert limits to such contracts. If a low amount is set to favor drivers, the owners will be harmed because their expenses cannot be met. There is no reason why the marketplace does not set rates. Costs may vary since owners paid different amounts for medallions.

Maximum number of taxicab driver's certificates. 1021.3.

(a) *Maximum number established.* Except as provided in subsection (c) or when necessary in the public interest, the Authority will issue no more than 3,000 taxicab driver's certificates.

COMMENT

There is no reason for this restriction set forth as no study was performed.

By way of background, when the PUC was determining the number of medallions to issue, it did an extensive study of the marketplace in the City. Here, nothing has been done.

With more than 1700 cabs in operation this is less than 2 drivers per vehicle. The marketplace should determine the number, especially in an economy with people looking for jobs. More qualified drivers may be restricted and the public interest not promoted by this provision. The number of taxi drivers limited to this extent would have some impact on the City by way of taxes, license fees, etc. Yet, the PPA has ignored this aspect stating that no evaluation is required.

It is unclear if the dual authority set forth herein for limo and cab drivers holding dual authority would be included. Would a driver operating a limo not be counted among the 300?

Standards for obtaining a taxicab driver's certificate. 1021.5.

1001.36, which provides A written statement verified as provided in § (11) that:

The applicant has not been subject to a conviction as provided in (i) 1011.2 (relating to definitions). §

1011.7 (relating to payment of The applicant is in compliance with § (ii) outstanding fines, fees, penalties and taxes.

See above comments relating to convictions and payment of

fees. Section 1011.5 The Authority does not describe how it would ascertain if taxes have been paid.

Impoundment of vehicles and equipment. 1017.52.

(a) *Impoundments generally.* The Authority may impound vehicles, medallions, and equipment used to provide call or demand service as provided in section 5714 (g) of the act (relating to confiscation and impoundment of vehicles).

(b) *Enforcement proceedings.* The Enforcement Department or trial 1005.11 counsel will initiate an enforcement proceeding as provided in § (relating to formal complaints generally) against the regulated party or owner or the impounded property, if other than a regulated party, related to an impoundment made under this section and the act.

(c) *Notice of impoundment.* The Authority will issue a notice of impoundment to the registered owner of the vehicle and registered lienholder of the vehicle or medallion, or both, if any, as provided in section 5714 (g)(2)(ii) of the act.

(d) *Recovery of impounded property.* Except as provided in subsection (g), the owner or lienholder of the property impounded as provided in this section may recover the impounded property by paying all penalties, fines and costs required under section 5714 (g)(1) of the act.

(e) *Public auction.* If the owner or lienholder fails to recover the impounded property within 45 days as provided in section 5714 (g)(1) of the act, that property may be sold at public auction as provided in section 5714(g)(2)(i) of the act.

(f) *Return of funds.* If the enforcement proceeding initiated as provided in subsection (b) results in a determination that the respondent was not liable for the violations referenced in the complaint and that the grounds for the impoundment were unsubstantiated, the costs of towing and impoundment paid by the respondent as provided in subsection (d) will be refunded.

(g) *Stay of auction.* Upon motion of the respondent or a registered owner or a registered lienholder as an intervening party as permitted under 1005.31 (relating to initiation of intervention), the presiding officer may § enter an order staying the public auction of the impounded property for such period as the presiding officer deems just. Costs of impoundment will continue to accrue during the period of any stay imposed through this subsection.

(h) *Emergency hold on impounded property.*

To advance the interests of the act or to protect the public good, the (1) Enforcement Department or trial counsel may motion the presiding officer to stay the return of property impounded as provided in this section through the conclusion of the

enforcement proceeding, although requirements for recovery as provided in subsection (d) have been met.

The presiding officer will issue a decision in support of the (2) determination required under this section.

COMMENT

Impoundment is a severe remedy for obvious reasons. The process should be severely limited as it is an extreme remedy.

The power of the enforcement officer to impound a vehicle for alleged conduct harms the owner and driver unnecessarily. The driver or owner should be provided the opportunity to take control of the vehicle to drive it to the owner's facility until the hearing is finalized.

Section (f) is unfair. Is unsubstantiated a greater burden than a favorable outcome? Moreover, since the victim has been harmed and to prevent the Authority from continuing improper action, the owner or victim should be reimbursed its loss of revenue by way of credits on fees or other obligations. Either a sum stated for each day or proof more has been lost should be the accepted measure.

Section h is not reasonable. Depending on the reason for impoundment, the owner should be given the opportunity to place it in service. Too often the reason for impoundment has been shown to be wrong, but it may continue to recur if no financial penalty can be assessed against the Authority.

Sec.

- 1019.1. Purpose and prohibition.
- 1019.2. Ineligible persons for dispatcher service.
- 1019.3. Dispatcher application.
- 1019.4. Application changes.
- 1019.5. Facility inspection.
- 1019.6. Review of dispatcher application.
- 1019.7. Name, colors and markings review.
- 1019.8. Dispatcher requirements.
- 1019.9. List of affiliated taxicabs.
- 1019.10. Dispatcher rates.
- 1019.11. Disclosure of conflicts.
- 1019.12. Bond required.
- 1019.13. Maximum number of dispatcher certificates.
- 1019.14. Minimum number of taxicab affiliations.
- 1019.15. Dispatcher records.

Purpose and prohibition. 1019.1. §

This chapter establishes and prescribes Authority regulations and (a) procedures for the certification and operation of dispatching services in Philadelphia under sections 5711(c)(6) and 5721 of the act (relating to power of the authority to issue certificates of public convenience; and centralized dispatcher).

A person may not provide dispatching services in Philadelphia without a (b) certificate issued by the Authority as provided in this chapter.

Ineligible 1019.2. § persons for dispatcher service.

An applicant is ineligible to be a dispatcher under the following circumstances:

If the applicant, a person with a controlling interest in the applicant (1) or a key employee is ineligible to own Authority issued rights as provided in 1011.5 (relating to ineligibility due to conviction or arrest). §

The applicant is incapable of providing dispatching services through (2) persons or communication devices that speak, read and write the English language sufficiently to clearly communicate with the public and respond to Authority investigations and comply with reporting requirements of the Authority's regulations.

The applicant, a person with a controlling interest in the applicant or (3) a key employee knowingly makes a false statement on a dispatcher application.

The applicant, a person with a controlling interest in the applicant or (4) 1011.7 (relating to payment of outstanding a key employee is in violation of § fines, fees, penalties and taxes).

The applicant or any person having a controlling interest over the (5) applicant is 20 years of age or younger.

Dispatcher application. 1019.3. §

(a) *General.* To obtain a dispatcher's certificate a person shall complete and file a Form No. DSP-1 "Dispatcher Application," along with the 1001.42 and 1001.43 (relating to mode of application fee as provided in §§ payment to the Authority; and Authority fee schedule). The DSP-1 may be obtained on the Authority's web site at www.philapark.org/tld.

(b) *DSP-1 application.* The completed DSP-1 must be verified as 1001.36 (relating to verification and affidavit) and be filed with provided in § the Director in person by the owner of the applicant and include all of the information required by the Authority, including the following:

The name of the applicant and contact information, including a mailing (1) address, a Philadelphia business address, a telephone number, an email address and a facsimile number.

An identification of the applicant as an individual or a person as (2) 1001.10 (relating to definitions). provided in §

If the applicant is not an individual, the following must be (3) included:

The articles of incorporation, operating agreement, formation documents (i) or other applicable organizing documents for the applicant.

A certificate of good standing for the applicant from the Corporation (ii) Bureau.

A copy of the Department of State's entity page for the applicant. (iii)

The trade name, if any, of the applicant and a copy of the trade name (iv) registration certificate, if applicable.

The mailing address and physical address of the applicant, if (4) different.

A list of all Authority or PUC certificates or other rights in which the (5) applicant or any person with a controlling influence in the applicant has any controlling interest, including taxicab medallions.

The name, address, telephone number, facsimile number, and email address (6) of any attorney or broker, or both, assisting the applicant through the Authority's dispatcher certification process.

1001.10, A complete certified criminal history report as provided in § (7) including any jurisdiction in which the following individuals have lived during the last 5 years:

An individual applicant. (i)

Any person with a controlling interest in the applicant. (ii)

Each key employee. (iii)

1001.36 (relating to A written statement verified as provided in § (8) verification and affidavit), which provides that:

The applicant, each person with a controlling interest in the applicant (i) and each key employee have not been subject to a conviction as provided in 1011.2 (relating to definitions). §

The applicant, each person with a controlling interest in the applicant (ii) 1011.7 (relating to payment of and each key employee are in compliance with § outstanding fines, fees, penalties and taxes).

The applicant, each person with a controlling interest in the (iii) applicant and each key employee are current on all reports due in relation to other rights issued by the Authority.

1019.8 (relating to The applicant can comply with the requirements of § (iv) dispatcher requirements).

A copy of the applicant's business plan. (9)

A completed original of Form No. DSP-3 "Business Experience (10) Questionnaire."
A copy of the DSP-3 may be obtained on the Authority's web site at www.philapark.org/tld.

The Federal Tax Identification number of the applicant. (11)

The Philadelphia Business Privilege License numbers issued to the (12) applicant.

At the time a DSP-1 is filed, an applicant for a dispatcher's (c) certificate shall also file a DSP-2 "Dispatcher Colors and Markings 1019.7 (relating to names, colors and Change/Application" as provided in § markings review).

Application changes. 1019.4. §

An applicant for a dispatcher certificate shall immediately notify the Authority in writing of any changes that affect the accuracy of the information in the application while the application is under review by the Authority.

Facility inspection. 1019.5. §

An applicant for a dispatcher's certificate shall make its proposed (a) operating locations available for inspection by the Enforcement Department as part of the application process and throughout the term of its status as a dispatcher. A facility inspection may be conducted without prior notice.

Dispatchers shall provide all dispatching services from facilities (b) located in Philadelphia.

Review of dispatcher application. 1019.6. §

An application for a dispatcher's certificate will be denied by the (a) Authority if the dispatcher is unable to meet the requirements of this chapter, 1019.8 (relating to dispatcher requirements). including §

An application for a dispatcher's certificate will be granted if the (b) applicant complies with this subchapter and the Authority finds that the applicant is capable of providing dependable service according to the act, this part and orders of the Authority.

Name, colors and markings review. 1019.7. §

To change or establish any name, colors or markings, a dispatcher shall (a) file a DSP-2 "Dispatcher Colors and Markings Change/Application" along with 1001.42 and 1001.43 (relating to mode of the application fee as provided in §§ payment to the Authority; and Authority fee schedule). The DSP-2 may be obtained on the Authority's web site at www.philapark.org/tld.

The Authority will not approve a DSP-2 application if it determines that (b) the requested name or colors and markings are similar to those of an existing dispatcher.

Upon approval of a DSP-2 application, the dispatcher shall have the (c) exclusive right to use the approved name, colors and markings, provided the certificate has not expired or been cancelled.

Each dispatcher shall use only a single name, colors and marking scheme (d) for all the medallion taxicabs it dispatches.

Each dispatcher shall use a distinctive name, colors and marking scheme (e) 1017.11(b) (relating for partial-rights taxicabs it dispatches as provided in § to distinctive colors and markings).

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A dispatcher may not change an approved name, colors and markings scheme (f) without advance approval of the Authority as provided in this section.

The colors and markings of a dispatcher must be consistent with the (g) requirements of Chapter 1017 (relating to vehicle and equipment requirements).

Dispatcher requirements. 1019.8. §

A dispatcher shall continually maintain standards and equipment capable of providing prompt and adequate service to the public, including the following:

Control a radio frequency signal of (1) sufficient strength to transmit and receive real time verbal communication and data throughout Philadelphia.

Respond to customer calls 24 hours a day. (2)

Have taxicabs available for dispatch 24-hour, 7 days-a-week. (3)

Dispatch taxicabs with current Authority rights to provide the service (4) requested.

Obtain the Authority's confirmation, which may be provided by the (5) Authority through email, of a taxicab's good standing before commencing to provide it with dispatching service.

Have at least one display advertisement in a telephone book with (6) citywide circulation in Philadelphia and a web site which displays all of the information necessary to order a taxicab through the dispatcher.

Have a minimum of four coordinated telephone lines to receive incoming (7) calls for service from the public.

Operate and maintain a taxicab meter system approved by the Authority as (8) 1017.23 (relating to approved meters), including computer hardware provided in § and software, means of communication between the dispatcher and each taxicab meter and the Authority.

Answer customer questions about rates and services provided within 12 (9) hours.

Answer customer questions or complaints about service in writing and (10) within 5 days of receipt of the complaint.

1019.15 (relating to dispatcher Maintain records as provided in § (11) records).

A dispatcher may not discriminate against nor allow its affiliated (12) drivers to discriminate against any member of the public and may not refuse service to any section

of Philadelphia. Partial-rights taxicabs may only be dispatched to provide service consistent with the certificate holder's rights.

A dispatcher must be able to receive and respond to emergency or (13) distress alerts received from taxicab drivers 24-hour, 7 days-a-week.

In addition to the requirements of the act, this part or an order of (14) the Authority, a dispatcher may institute rules of conduct for drivers and certificate holders associated with the dispatcher.

A dispatcher shall report violations of the act, this part or an order (15) of the Authority committed by a driver or certificate holder associated with the dispatcher to the Authority immediately.

List of affiliated taxicabs. 1019.9. §

A dispatcher shall file a complete Form No. DSP-4 "Dispatcher Affiliated Taxicabs" with the Authority on the first business day of each week noting the taxicab numbers and certificate holders associated with the dispatcher at that time. A Form No. DSP-4 may be obtained at www.philapark.org/tld. If a taxicab is added or removed from a dispatcher's customer list, the dispatcher shall report the change within 24 hours to the Authority by email.

Dispatcher rates. 1019.10. §

A dispatcher may not provide service to taxicabs unless it has filed a (a) Form No. DSP-5 "Dispatcher Rates" with the Authority establishing the rates schedule charged for the dispatcher's services. Only the rates identified in DSP-5 filing may be charged by the dispatcher, or any agent or employee of a dispatcher. The DSP-5 may be obtained at www.philapark.org/tld.

A dispatcher may amend its DSP-5 filing at any time, with an effective (b) date 30 days from the date of filing.

A dispatcher shall provide a copy of its DSP-5 to each of its associated (c) drivers and certificate holders.

Under section 5721 of the act (relating to centralized dispatcher), the (d) Authority may deny the filing of a DSP-5 if it determines that the suggested rates are unreasonable.

Disclosure of conflicts. 1019.11. §

A dispatcher shall disclose, through the filing of the DSP-4, any (a) dispatching services that may be provided to taxicabs owned or operated by the dispatcher, a person with a controlling interest in the dispatcher, key employee or immediate family members of the dispatcher.

For the purposes of this section, "immediate family members" means the (b) spouse or domestic partner, parent, grandparent, great-grandparent, great-great grandparent, children, siblings (including "half" and step-siblings), uncles/aunts, grand uncles/aunts, grandchildren, nephews/nieces, first cousins, great-grandchildren and grand nephews/nieces of the dispatcher.

Bond required. 1019.12. §

Within 30 days of receipt of the Authority's email notification of its (a) intention to grant an applicant's DSP-1 application, the applicant shall file a bond or irrevocable letter of credit consistent with this section with the Authority.

A dispatcher may not provide dispatching services unless the bond or (b) irrevocable letter of credit required by this section has been filed and 1003.51(e) (relating to accepted by the Authority and the requirements of § applications generally) have been satisfied.

A dispatcher's bond or irrevocable letter of credit shall be issued in (c) an amount of at least \$50,000 and upon terms and in a form as will insure the dispatcher's adherence to the law, the Authority's regulations and orders and the interests of the dispatcher's clients, including payment of all fines, fees and penalties incurred by the dispatcher.

Maximum number of dispatcher certificates. 1019.13. §

The number of dispatcher certificates in Philadelphia may not exceed 12.

Minimum number of taxicab affiliations. 1019.14. §

A dispatcher shall remain affiliated with at least 20 active taxicabs (a) for dispatching services with each taxicab displaying the name, colors and markings of the dispatcher approved as provided in this subchapter.

If a dispatcher fails to maintain the minimum number of affiliated (b) taxicabs the Enforcement Department or trial counsel will provide 30 days notice of its intention to initiate an enforcement proceeding through a formal 1005.11 (relating to formal complaints generally) to complaint as provided in § cancel the dispatching certificate.

Upon notice of planned enforcement proceedings as provided in subsection (c) (b), the dispatcher will be permitted to initiate a certificate transfer as provided in Chapter 1027 (relating to sale of rights) or come into compliance with subsection (a).

If a dispatcher and proposed buyer of the certificate initiate a (d) certificate transfer within 30 days of the notice provided under subsection (b), the enforcement proceedings may be stayed unless the Enforcement Department or trial counsel determine that a transfer of the certificate is not likely to occur within 6 months of the date the transfer application was filed.

If a dispatcher comes into compliance with subsection (a) within 30 days (e) of the notice provided under subsection (b), the dispatcher shall provide notice of that status to the Enforcement Department or trial counsel, and if proven the matter will be closed.

Dispatcher records. 1019.15. §

A dispatcher shall maintain records related to its affiliated certificate holders, its customers, the calls or scheduling for service it receives and the 1011.11 (relating to record retention). dispatches it makes as provided in §

COMMENT

This section serves to highlight the differences between partial rights cabs and medallions. In my opinion, whether intended or not, it is another proposal that will result in harm to the public because it will or may cause the demise of at least one or more partial rights operations, loss of employment to numerous persons driving and working at these businesses and cause a disruption in service or complete cessation to the riding public.

For some time in the industry there has been hostility between medallions and Germantown Cab, a major partial rights operation, for a variety of reasons.

The interests of the two types of businesses differ. For years, Germantown Cab has maintained its own dispatch system. PUC regulations impose certain requirements that differ from PPA. Germantown cab's dispatch system not only has to be capable of dispatching cabs in the Germantown area under a system it has developed for years with its many drivers, but also it must dispatch to parts of Montgomery County also under its territory.

It does not dispatch medallion cabs.

1019.13 creates a substantial issue. It is interesting that there are 265 pages of proposed regulations detailing legal procedures, modes of operations, qualifications of owners and drivers, etc. Yet, this one simple provision consisting of one sentence contains the potential to end Germantown Cab's existence. If germantown cannot be one of the 12 dispatchers its operations are threatened. No reason is given to limit the dispatch to 12. If the number of Dispatchers is limited without assurance that Germantown can continue with its current system, business operations cease. The regulations contain no explanation as to how dispatchers will be selected.

Moreover, there is a legal question if Section 5721 applies to a partial rights dispatch system. Section 5721 requires only medallions to be members of a centralized dispatch system. It does not include partial rights to that requirement. To now require this to be applicable to an operation like Germantown Cab or any other partial rights operation ignores the difference between the two type operations and imposes costs not necessary to partial right dispatchers. The equipment that is needed for dispatching medallions may differ from a partial rights operation. Certainly, some of the qualifications may be required of persons involved in the operations, but it is unreasonable to believe a dispatch operation involving partial rights cabs and medallions can operate in one system. Because some partial rights cabs have less than 20 cabs, this result

would be impossible to avoid. Conflicts in the operations of these two types of rights are sufficient reasons alone to allow a partial right cab to have its own dispatch. The fact cabs are dispensed outside of Philadelphia is another reason the two cannot coexist.

The regulations are unclear if any employee must pass a record check or only a key employee.

The experience of dispatching its cabs in both territories is one Germantown Cab and other partial rights operations developed over years and another dispatcher is far less likely to perform the task. The fact that these operations may need to move its dispatching operation outside the City for business reasons is prevented under these regulations. Since it is also regulated by the PUC, this makes no sense. See 1019.5. Thus, for these and other reasons, partial rights cabs should be exempt from the dispatching provisions.

The regulations are unclear if any employee must pass a record

1021.16. Service issues regarding people with disabilities.

If on-duty and not already transporting a passenger, a taxicab driver shall stop the taxicab when hailed by a person with a disability. The driver shall determine if the services requested by the person can be reasonably accommodated by the vehicle and adhere to the following procedure:

If the service request can be reasonably accommodated, the driver shall (1) provide the service.

If the service request cannot be reasonably accommodated, the driver (2) shall call a dispatcher immediately to arrange for service by the closest taxicab available that can accommodate the person's request.

COMMENT

This requirement may require a partial rights driver to operate outside his territory. If the PPA is concerned about public safety, there should be stated an exception if a partial rights cab is hailed by an elderly or disabled person.

1023.1.Uniform taxicab rate.

All taxicabs shall charge a uniform rate to passengers as determined by (a) the Authority upon investigation. The Authority's taxicab rates are available at www.philapark.org/tld.

The taxicab rates approved by the Authority will include provisions for (b) the payment of tolls, airport exit or entry fees, waiting periods and applicable flat rates by passengers.

COMMENT

It is unclear what the investigation will constitute. Who will be involved? Will selected representatives of the industry participate? It is suggested that medallion, partial rights, drivers, and others be involved and the regulation should so state.

INSURANCE REQUIRED CHAPTER 1025.

Sec.

1025.1: Definitions.

1025.2. Insurance forms and procedures.

1025.3. Insurance required.

1025.4. Applications to self-insure.

1025.5. Standards for adjustment and payment of claims.

1025.6. Additional requirements.

Definitions. 1025.1. §

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Form E—The standard form filed by a regulated party's insurer evidencing the existence of a current and valid insurance policy or surety bond in the name of the insured and for lines of coverage and with limits required by the Authority.

Form K—The standard form filed by a regulated party's insurer providing notice of cancellation of an insurance policy or surety bond previously maintained to be in compliance with the act, this part or an order of the Authority.

Self-insurer—A certificate holder that adjusts and is ultimately liable for payment of all or part of its bodily injury, property or cargo damage claims resulting from the operation, maintenance or use of a motor vehicle as a taxicab.

Insurance forms and procedures. 1025.2. §

(a) *Forms of notice.*

Endorsements for policies of insurance and surety bonds, certificates of (1) insurance, or for approval of other securities or agreements shall be made through Form E.

Notices of cancellation for policies of insurance, surety bonds, (2) certificates of insurance and self-insurer status, shall be made through Form K.

Each provider of insurance and surety bonds shall complete and file the (3) Authority's Form INS-1 "Contact Information" upon the first filing of a Form E in each calendar year and at anytime during the year when the contact information provided will change. A copy of the Form INS-1 is available on the Authority's web site at www.philapark.org/tld.

(b) *Surety bonds and certificates in effect continuously.* Surety bonds and certificates of insurance must specify that coverage will remain in effect continuously until terminated, except under one of the following conditions:

When filed expressly to fill prior gaps or lapses in coverage or to (1) cover grants of emergency temporary authority of unusually short duration and the filing clearly so indicates.

Urgent circumstances, when special permission is obtained from the (2) Authority.

(c) *Filing and copies.*

Certificates of insurance, surety bonds and notices of cancellation (1) required by subsection (a) must be filed with the Director by email at eksubmission@philapark.org.

The Authority may prescribe additional information and content necessary (2) for endorsements and notices required by this section.

The Authority will provide prompt notice of acceptance of filings (3) required by this section by return email message.

(d) *Name of insured.* Certificates of insurance and surety bonds shall be issued in the full and correct name of the regulated party to whom the certificate, registration, or license or other right is, or is to be issued. In the case of a partnership, all partners shall be named.

(e) *Cancellation notice.* Except as provided in subsection (f), surety bonds, certificates of insurance and other securities or agreements may not be cancelled or withdrawn until after 30 days notice in writing has been issued by the insurance company, surety, motor carrier, broker or other party, to the Director. The period of 30 days begins from the date the Director provides notice of acceptance as provided in subsection (c)(3).

(f) *Termination by replacement.* Certificates of insurance and surety bonds which have been accepted by the Authority under this chapter may be replaced by other certificates of insurance, surety bonds or other security, and the liability of the retiring insurer or surety under the certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurance, surety bond or other security, if the replacement certificate, bond or other security is acceptable to the Authority under this chapter.

(g) *Refusal to accept, or revocation by the Authority of surety bonds.* The Authority may refuse to accept or may revoke its acceptance of a surety bond, certificate of insurance or other securities or agreements if, in its judgment, the security does not comply with this subchapter or fails to provide satisfactory or adequate protection for the public. Revocation of acceptance of a certificate of insurance, surety bond or other security does not relieve the regulated party from compliance with this subchapter.

(h) *Compliance.* Failure to maintain evidence of insurance on file with the Authority in accordance with this chapter shall cause the rights and privileges issued to the regulated party to be placed out of service immediately 1003.32 (relating to out of service designation). The Authority as provided in § may establish rules under which suspended rights and privileges may be temporarily reinstated pending compliance with this subpart.

Insurance required. 1025.3. §

A regulated party may not engage in taxicab service and the certificate (a) of public convenience will not be issued or remain in force, except as provided 1025.4 (relating to applications to self-insure) until there has been filed in § with and approved by the Authority a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others

resulting from the operation, maintenance or use of a taxicab in the insured authorized service.

The liability insurance maintained by a taxicab certificate holder shall (b) be in an amount of at least \$50,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. The \$50,000 minimum coverage is split coverage in the amounts of \$20,000 bodily injury per person, \$40,000 bodily injury per accident and \$10,000 property damage per accident. This coverage must include first party medical benefits in the amount of \$25,000 and first party wage loss benefits in the amount of \$25,000 for passengers and pedestrians. Except as to the required amount of 1701—1799.7 (relating to coverage, these benefits must conform to 75 Pa.C.S. §§ Motor Vehicle Financial Responsibility Law). First party coverage of the taxicab 1711 (relating to driver of taxicabs must meet the requirements of 75 Pa.C.S. § required benefits).

The certificate holder's loss history with a current or former insurer (c) shall be released to the Authority within 2 business days of a request by the Authority. The certificate holder shall authorize any release required by the insurer to facilitate the timely delivery of the loss history to the Authority.

The Authority may direct insurers to file proof of insurance both (d) electronically and in hard copy.

The limits in subsection (b) do not include the insurance of cargo. (e)

COMMENT

I agree with the comments set forth by Mr. Hambrecht. I want to supplement his comments by stating that PIP includes both wage loss and medical bills. I do not believe that wage loss can remain if medical expenses are not included as part of PIP, especially since the wage loss is voluntary. In my experience in defending claims against cabs for causing personal injury or property damage, I am aware that almost all medical claims involving soft tissue injury cease when the PIP limits are reached. In my opinion, as borne out by various studies, the cost to the public, insurers, and insureds will increase

substantially if the PIP limits are imposed. In my opinion, there may be a drastic rise in premiums and may be fewer carriers in the marketplace.

I urge the proposal be rejected to increase the PIP.

CONCLUSION

Others have commented on other regulations. In the interest of brevity, my comments have been directed at different areas or not fully addressed in those comments.

For all these reasons and those expressed by other comments, I urge the Regulations proposed by the PPA to be withdrawn, revised and not fully adopted.

I urge the Commission and Authority to recognize how these regulations unfairly cause undue hardship to partial rights providers operating in and out of Philadelphia and redraft regulations for partial rights operations consistent with PUC provisions.

 /s/

Richard M Meltzer, Esq.