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November 4, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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400 North Street
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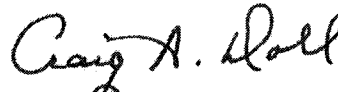
Re: Rulemaking Re: Motor Carrier Vehicle List And Vehicle Age Requirements
Docket No. L-2013-2349042
Via E-Filing

Dear Secretary Chiavetta:

Enclosed with this cover letter are the Comments of the Philadelphia Regional Limousine Association and Lehigh Valley Transportation Service, Inc. to the proposed changes in Commission regulations, promulgated at the above docket number. These Comments were e-filed this date.

If you have any questions, please feel free to contact me

Very truly yours,


Craig A. Doll

CAD/kmv
Enclosure

I. Introduction and Procedural History

By Proposed Rulemaking Order entered April 5, 2013, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) proposed to alter or eliminate certain motor carrier regulations found at 52 Pa. Code §§29.314 and 29.333 governing vehicle lists and equipment requirements for both call and demand service and limousine service.

While several companies which are members of the Philadelphia Regional Limousine Association (“PRLA”)¹, as well as Lehigh Valley Transportation Services, Inc. (“LVTS”) (collectively “Commentators”), possess call or demand certificates from this Commission, these comments will address only those proposed changes which impact the providing of limousine service.²

The Commission’s Order in this proceeding provided that written comments are to be submitted within thirty (30) days of the publication of the Order and Appendix A in the Pennsylvania Bulletin. Publication occurred on Saturday, October 19, 2013 in Vol. 43, No. 42, page 6203 of the Pennsylvania Bulletin. These comments are submitted in response to Ordering Paragraph 5 of the Commission’s April 5, 2013 Order.

The regulations which are proposed to be modified originated as the result of the issuance of an Advance Notice of Proposed Rulemaking Order of September 25, 2002 which made fundamental changes in Chapter 29 and 31 of the Commission’s motor carrier regulations. As part of those changes, the Commission enacted Section 29.314 (c) and (d) as well as Section 29.333(d) and (e), 52 Pa. Code §§29.314(c),(d) and 29.333(d), (e). Those provisions initially

¹ P.S. Jagiela Enterprises, Inc., Unique Limousine Service, Inc., At Your Service Limo, and King Limousine and Transportation Service are specific members of the PRLA.

² LVTS also holds a call or demand certificate from the Commission and with others will be filing comments specific to the proposed call and demand regulations.

established the requirement that a motor carrier submit to the Commission a list of all vehicles in the carrier's fleet and established an eight (8) model year limitation on vehicles used in the public service. In this proceeding, the Commission seeks to: (1) eliminate the vehicle list requirements for taxicabs and limousines currently found in 52 Pa. Code §§29.314(c) and 29.333(d); (2) eliminate the waiver exception for both taxicabs (52 Pa. Code §29.314(d) and limousines (52 Pa. Code §29.333(e)); and (3) substitute a mileage limitation in lieu of an age limitation on vehicles used in limousine service. (52 Pa. Code §29.333(e).

II. Proposed Changes

A. Vehicle List

As part of the Commission's 2005 Order, Section 29.333(d) was added as a vehicle requirement for limousine carriers.³ Section 29.333(d) was adopted in response to a 2011 recommendation of the Legislative Budget and Finance Committee which suggested that as a method of the Commission possessing a comprehensive list of vehicles used in the transportation of passengers within the Commonwealth that all vehicles be registered with the Commission. The Commission's response was the enactment of 52 Pa. Code §29.333(d) for limousines. This provision required all limousine carriers to provide a list of **all** vehicles in a fleet that were devoted to providing service to the public once a year between December 1 and December 31, of each calendar year. Within this proceeding, the Commission seeks to eliminate this requirement due to "the list often [becoming] unreliable and outdated due to frequent vehicle turnover".

While there may exist a frequent turnover in the taxicab industry, this is generally not true for limousines, due to frequent and constant maintenance and the higher cost of replacing a vehicle. The Commentators herein support the elimination of the furnishing of an annual list of

³ An identical provision, applicable to call and demand service was adopted as §29.314(c).

all vehicles, but would recommend that if the Commission adopts the Commentators' suggested changes to §29.333(d), a carrier be required to furnish a listing of any vehicle that would meet the criteria for elimination from a fleet pursuant to the proposed §29.333(d) at the beginning of a year when the vehicle would either "age or mileage out". Such a list would enable the Enforcement Division of the Commission's Bureau of Investigation and Enforcement to schedule any necessary inspections occasioned by securing a waiver of the current 8 year age out rule. The elimination of this requirement for limousine carriers will decrease the time and costs associated with compiling this information on all vehicles and submitting it to the Commission.⁴ Additionally, the Commentators agree that not only may an Enforcement Officer request that a vehicle be presented for inspection at any time he visits the carrier's premises pursuant to the provisions of 52 Pa. Code §29.406; and 66 Pa. C.S. §§307 and 506, the furnishing of a list of the vehicles that will reach 8 model years of age or a specified mileage as suggested herein, will enhance the ability of the Enforcement Division to manage its schedule of special inspections which are also part of the Commentator's proposal.

As a substitute, to the reporting of all vehicles in a particular limousine fleet on an annual basis and consistent with the recommendations contained elsewhere in these comments, it is suggested that during the first quarter of a calendar year, a limousine company provide a listing of vehicles that are anticipated to exceed the mileage limitation in that calendar year.⁵ In that manner, the Enforcement Division and the Commission can prepare for and have sufficient time to schedule any necessary inspection of vehicles which will exceed the mileage limitation during the coming calendar year for which a waiver (or as suggested later, a "wheels off" inspection)

⁴ Carriers generally track their vehicles for PennDOT licensing and insurance purposes.

⁵ To the extent that the Commission retains the 8 year age limitation for limousine service, the list would consist of those vehicles that would exceed the age limitation at the end of that model year.

would be sought. By furnishing a list and current odometer reading, special inspections can be scheduled throughout the year. For example and assuming that there is no change in the proposed trigger mileage, if a carrier reports that two vehicles with current odometer readings, as of January 1 of the current calendar year, of 190,000 and 150,000 respectively are anticipated to exceed the mileage limitation, the Enforcement Division can either schedule a first quarter inspection of both vehicles or wait until later in the year to schedule the second vehicle for inspection. The furnishing of this list will provide an advance notification to the Division, which, in turn, will avoid any end of the year rush to inspect multiple vehicles.

B. Replacement of Vehicle Age Limitation (Section 29.333(e))

The modification proposal for this subsection is comprised of two substantive changes: (1) elimination of the language (“unless otherwise permitted by the Commission”) which gives the Commission the discretion to grant individual vehicle waivers in an apparent attempt to make the rule absolute; and (2) the substitution of a 200,000 odometer mileage limitation on a vehicle for the current eight year vehicle age limitation.

1. Elimination of Commission Discretion

As set forth in the Commission’s Order⁶ the original purpose of the “unless otherwise permitted by the Commission” language was to provide the Commission with “a certain amount of discretion” to grant a vehicle by vehicle exception to the current 8 year age limitation.

The origin of this language is of particular interest. As originally proposed, §29.314 did not include the “unless otherwise provided” language.⁷ In adding this language the Commission stated:

⁶ *Rulemaking Re Motor Carrier Vehicle List And Vehicle Age Requirements, L-2013-2349042*
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Finally, much commentary was provided on the vehicle age requirement. Generally, the commentators suggested that this requirement would unnecessarily increase costs, including insurance costs. Further, commentators suggest that a vehicle's age is not an accurate barometer of the vehicle's condition.

While we understand that age is not synonymous with condition, we are also cognizant that age is one of the most important factors to ensure a vehicle is fit for service. We have the difficult task of ensuring a safe and reliable taxi fleet⁸ for the public, with only limited tools available to meet this challenge. Age of a fleet is a viable, efficient tool for this job.

However, we recognize that this requirement may cause undue hardship on select carriers. Therefore, we will allow a compromise. We will continue to impose an 8 year limit, subject to a specific exemption. A carrier may request our enforcement personnel to inspect any vehicle more than 8 years old to determine if that vehicle is fit for service. While this necessitates a certain amount of discretion be exercised by our enforcement personnel, this is the necessary result when the clear cut 8 year litmus test is rejected.

(footnote added). As a result, the Commission inserted the "unless otherwise permitted" language in §29.333.

In order to ascertain whether the Commission should grant a vehicle specific waiver of the limitation, the Commission established an elaborate process whereby a carrier submitted to the Commission: photographs, detailed maintenance records, justification for the waiver for that particular vehicle, and whatever additional information that the Commission deemed necessary.

⁷ The Commission discussed this language within the context of the changes to the taxicab regulations, however, added this language to §29.333 as well.

⁸ The Commission has, in this proceeding, recognized that the age of a vehicle is not an accurate barometer of condition for vehicles used in limousine service.

Submission of reams of paper to the Commission required an extraordinary amount of time for the carrier to compile and the Bureau to review.⁹

As justification for removing the Commission's discretion provided by the "unless otherwise permitted" language, the Order states that of the vehicles presented "less than 15% passed the Commission's safety and reliability standards **for taxis** to operate in motor carrier service for the public."¹⁰ In addition, the Commentators can appreciate that administrative costs can outweigh any public benefit. Little doubt exists that a reliable vehicle benefits both the public and the carrier. If a carrier cannot rely upon his vehicle to be available for service, that carrier's reputation and revenues will suffer. The members of PRLA report that their vehicles are temporarily out of service for routine maintenance several times a year, but have experienced no major overhauls.¹¹ The Commentators suggest that the Commission recognize that the maintenance practices of most if not all of the motor carriers engaged in limousine service are paramount to the safety and convenience of the traveling public. To that end, the Commission could do away with the cumbersome pre-inspection process and rely upon a special "wheels off" inspection of those vehicles which will exceed the established mileage limitation and are contained on the list furnished to the Commission. The changes proposed by the Commentators will drastically reduce administrative costs and burden to both the industry and the Commission staff while maintaining safety and reliability.

⁹ See pages 5-7 of the Commission's Order in this proceeding which pages provide further details of the process. Currently, this administrative process is applicable to both taxicab and limousine service.

¹⁰ Emphasis added. No statistics are provided for limousine service but use of the phrase "due to the number of applications" in the discussion at page 8 of the Commission's Order, the undersigned assumed that the number of limousine companies seeking waivers far exceeded the number of taxi company requests. Due to the good condition which more expensive limousines are kept, it is also assumed that the number of vehicles which passed muster far exceeds the 15% cited for taxicabs.

¹¹ For example King Limo has, despite high mileage on its vehicles, has experienced one major overhaul in 10 years.

In eliminating the “discretion” language, the Commission notes in footnote 3 on page 8 of its order that: “A carrier regulated by the Commission may still file a petition for waiver of Commission regulations. 52 Pa. Code §5.43” to seek to use a vehicle that exceeds an odometer reading of 200,000 miles. While this is true, reliance upon this provision provides additional pitfalls. First; the administrative burden will not be eliminated but transferred within the Commission and may even increase. Nothing in the Commission’s Order hints that the criteria currently being utilized by the Commission’s Bureau of Investigation and Enforcement will be any different than that being utilized today. In fact, Section 5.43 provides:

A petition to the Commission for the issuance, amendment, waiver or repeal of a regulation must set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved. The petition must set forth the purpose of, and the facts claimed to constitute the grounds requiring the regulation, amendment, waiver or repeal. Petitions for the issuance or amendment of a regulation shall incorporate the proposed regulation or amendment.¹²

As it is under the current system, the request for waiver is fact specific. Thus, it should be assumed that the same information that is currently required will also be required in a Petition under §5.43. Upon receipt of the Petition, the Commission, after docketing by the Secretary’s Bureau, would presumably forward the Petition to the Bureau with the specific expertise to provide an analysis of the Petition – presumably the Bureau of Investigation and Enforcement in conjunction with the Law Bureau. Thus begins the Commission’s review of the worthiness of the Petition. Upon review of all factual allegations, the Commission may determine that additional

¹² The Petition must be served upon anyone directly affected by the request, the Office of Trial Staff, OCA, and OSBA.

facts are necessary to complete its analysis. Additionally, one or more of the additional parties may offer facts that call into question the facts put forth by the Petitioner. In such a case, it is safe to assume that the Commission could refer the matter to the Office of Administrative Law Judge to ascertain the true facts in the matter. Upon the holding of hearings, the filing of briefs, the issuance of an Initial Decision, and the filing of exceptions, the matter would come before the Commission for decision. Presuming no factual disputes arise, the Petition and Staff analysis and recommendation would come before the Commission. By requiring the motor carrier to petition the Commission for the waiver of the regulation, the work load upon the Commission and its Staff does not change and may increase.

Of additional concern is the fact that 52 Pa. Code §5.43 would arguably allow waiver of §29.333(d) for all vehicles owned by a particular motor carrier, does not require a special inspection, and apply forever unless modified at a later date. Additionally, should the Commission determine to make an order vehicle specific, it will be faced with multiple §5.43 petitions as each vehicle approaches the established mileage limitation. For example, King Limo Service currently possesses a fleet of approximately 150 vehicles devoted to the public service. If the Commission requires vehicle specific §5.43 petitions, King will be required to file a petition as each vehicle approaches the 200,000 mile limit.¹³ Similarly, Unique Limousine eventually would have to file approximately 30 petitions for its vehicle fleet.

Assuming the Commission Order requires a special inspection of any vehicle for which a Petition is successfully filed, the work load on the Enforcement Officers will be no different than

¹³ King Limo places approximately 60,000 miles per year on its vehicles. Utilizing the proposed 200,000 mile limitation, a petition for a vehicle purchased today would be required to be filed every 3 – 3½ years. Using the 60,000 mile per year average with the current 8 year limitation, the vehicle could have almost 500,000 odometer miles before a waiver request would be required.

it is today and is redundant given the ability of the Enforcement Officers to inspect any vehicle at any time pursuant to 52 Pa. Code §29.406.

Reviewing the rationale for the change from an age limitation to a mileage limitation, it would appear that it is the concern over the amount of paperwork generated over a condensed period of time.¹⁴ Elimination of the discretionary language in the regulation does not solve the problem.¹⁵ In order to eliminate the mound of paperwork which needs to be processed over a shortened period of time and then inspect the vehicle for safety the solution is quite simple – eliminate the automatic and absolute regulation as it applies to limousines. If the Commission deems some limitation to be set, the Commentators herein would not oppose a special “wheels off” inspection as a vehicle approached 500,000 odometer miles.¹⁶

2. Substitution of a Mileage Limitation for Age Limitation

A mileage limitation as well as an age limitation would serve only one useful public purpose – a trigger point for an extra special inspection. Unlike personal vehicles or vehicles used in the taxicab industry, two factors mitigate against the 200,000 mile limitation or age limitation: (1) cost and construction of vehicles and (2) maintenance programs.

PRLA members responded to questions reporting that as their vehicles are used for both interstate and intrastate operations, annual usage per vehicle per year can average 60,000 miles

¹⁴ There is currently no stated window for filing, but it appears that most requests are filed near the end of the calendar year.

¹⁵ As addressed previously, the change from the 8 year age limitation to a 200,000 mileage limitation may solve the condensed time period problem if the petition for waiver is filed as each individual vehicle approaches the mileage limitation. However, since the review process has not changed and may even take longer than under the current system, petitions will have to be filed at least 6 months before the vehicle reaches the 200,000 mile limitation.

¹⁶ If one assumes the 60,000 per year average mileage experienced by King Limo, under the existing system, a waiver would not have to be filed prior to an odometer reading of 480,000 miles.

or approximately 480,000 miles for an 8 year old vehicle. Thus, the average vehicle could reach the 200,000 mile limitation within 3½ years.¹⁷ The fact that vehicles used in the public service may be depreciated over a five (5) year period means that a vehicle must be retired prior to being fully depreciated for tax purposes.¹⁸ To require an owner to remove a vehicle from service without obtaining the financial return of its investment for tax purposes through depreciation creates an undue financial burden on an industry that still has not recovered from the from the effects of September 11, 2001 and the recent economic downturn.

Requiring the retirement of all vehicles after 200,000 miles presents an additional and immediate financial problem. The proposed regulation makes no distinction between a Lincoln or Cadillac (the preferred vehicles in the limousine industry)¹⁹ and a stretch limousine, meaning that both must be replaced after 200,000 miles. While a Lincoln or Cadillac carry a base price of approximately \$50,000, depending upon various appointments and options, stretch limousines carry a price tag of approximately \$96,000 which reflects the basic costs of modification.²⁰

At present, Unique Limousine possesses 15 Lincoln Town cars in its fleet of vehicles which are less than 8 model years old but have more than 200,000 odometer miles. Should the Commission approve the regulation modification as proposed, Unique would be required to spend approximately \$750,000 the day after the adoption of the regulation or cease running those

¹⁷ The Commentators readily admit that if the average annual mileage is similar to that of a personal passenger vehicle, the 200,000 mile limitation would enable the use of a vehicle for 10 years. None of the PRLA member responding to a questionnaire from the undersigned reported annual average mileage below 33,000.

¹⁸ See generally, Section 179 of the Internal Revenue Code.

¹⁹ The Lincoln Towncar is widely used in the industry. However, the full sized Towncar ceased production in 2011.

²⁰ These prices can vary greatly depending upon appointments, optional equipment, and the extent of the modification necessary, i.e. television, refrigeration equipment, etc.

vehicles until it could secure a waiver from the Commission. King Limousine Service currently utilizes 20 Lincoln Towncars which are less than 8 model years old but have greater than 200,000 miles on the odometer. With the average cost of \$50,000 per vehicle, King would be required to expend approximately 1 million dollars the day after approval of the regulation or file for a waiver. In addition to the cost of replacing those vehicles they will not be providing any revenue stream for the company. As was the case with Unique, King would be required to park those 20 cars until the Commission ruled on any waiver.²¹ Should a small operator with one or two vehicles be faced with the situation where all of their vehicles are under 8 model years old, but have in excess of 200,000 odometer miles, they would be forced to shut down their operations, buy brand new vehicles, or file for a waiver and await a Commission order prior to resuming operations. Few, if any, limousine companies can afford such expenditures or revenue loss.

While physical age and mileage are indicators to any owner for the need for increased vigilance with respect to a particular vehicle, it does not necessarily follow that expenses increase as mileage and age increases. Consistent routine maintenance and attention to minor mechanical and cosmetic issues can avoid major expenditures as the vehicle ages. This is particularly true of the smaller operator. It is only logical for any operator to sideline a vehicle for a few hours or a day to attend to minor issues than to have that vehicle being out of service for a week for a major overhaul or having to replace the vehicle. The Commentators agree with the Commission that maintenance is the key factor in insuring the safety and reliability of a particular vehicle. With adequate and regular maintenance today's vehicles are made to exceed

²¹ An additional question is the availability of vehicles. It is highly doubtful, considering the luxury appointments of vehicles used in limousine service that the manufacturers could rapidly meet the demand.

500,000 miles if properly and routinely maintained. For example, Unique removes each of its vehicles approximately ten times a year for regular maintenance. With this routine, Unique has not, within the last 20 years, been forced to replace an engine, exhaust system or replace major components of a vehicle due to ordinary wear and tear. The consensus among PRLA members is that vehicles are generally voluntarily replaced when the costs to maintain a vehicle, whether related to cosmetics or poor performance issues reach such a level that a prudent businessman would replace the vehicle.

Proper and routine maintenance not only applies to large operations but the smaller operator as well. As stated by Mr. Green, owner of At Your Service Limo in Mechanicsburg:

The majority of our work is from the Harrisburg area to either Dulles, or Newark and this puts a lot of miles on my vehicles in a really short time.

I have customers who ride in my cars regularly and often say they cannot believe the mileage we put on our cars and that they are always clean and free of mechanical problems. They, like many others, feel that high mileage is a problem. This is simply not true if the vehicles are taken care of. (Emphasis in original)

Exhibit A.

C. Proposed Regulation Modifications

The Commentators herein applaud the Commission for recognizing the fundamental differences between the vehicles utilized in limousine service from other motor carrier transportation. The Commentators appreciate the tremendous amount of time and effort expended by the Commission staff in devising a program to insure the safety of the traveling public while simultaneously recognizing the financial constraints currently being experienced by the limousine industry. The Commentators also agree that the age and mileage of a particular vehicle are important factors in the wear and tear to which each vehicle is exposed, factors which

can be overcome to a large part by routine maintenance and repair. Every part on a vehicle can be replaced or repaired if the owner is not concerned with cost. With replacement parts and proper maintenance, a 1920 Ford with 800,000 odometer miles can look and run better than a 2005 Ford with 20,000 odometer miles but which has never seen an oil change, dents and rust repaired, tires changed, etc.²²

As found by the Commission in its 2005 Order, the Commission's Enforcement Officers must be able to utilize their discretion in viewing both of these vehicles and consider all factors in making a determination whether to permit a vehicle to be used to provide service to the public. The Commission should not handicap an Enforcement Officer from exercising that discretion by imposing an absolute rule, whether age or mileage. The Commentators suggest that the Commission retain the "unless otherwise permitted by the Commission" language.

To recognize the need for greater vigilance which should be paid to older vehicles and eliminate the massive amount of paperwork and time consumed by both the Commission's Staff and carrier employees, the Commentators recommend that the Commission eliminate the intermediate step of determining whether a particular vehicle is worthy of inspection in the first place. The Commentators suggest that each carrier would provide notice to the Commission as suggested elsewhere in these comments which would set forth all vehicles that it anticipates will reach a predetermined odometer reading during the next 12 months. The Commentators suggest that a mileage limitation of 500,000 odometer miles be adopted. This figure is approximately the same mileage that a high usage vehicle would experience during the current 8 year limitation. For smaller operators, this would permit them to extend the life of their fleets. By providing such

²² Under the Commission's "absolute rule" an antique vehicle (defined by PennDOT for license tag assignment) would by definition fail both the current and most likely the proposed regulation.

notice to the Commission, the Enforcement Division can plan to make inspections over the period of a year.²³

At the appointed time, the vehicle will be presented to the Enforcement Officer for a comprehensive “wheels off” safety inspection. It should be noted that this special inspection would be in addition to any inspection made under the Pennsylvania Motor Vehicle Code or pursuant to the existing ability of Enforcement Officers under 52 Pa. Code §29.406. Assuming the vehicle passes this inspection, the carrier would be required to present this vehicle on an annual basis until the vehicle is retired from service. Should the vehicle fail the inspection, the vehicle would be placed “out of service” pursuant to 52 Pa. Code §29.406.

Consistent with the comments contained herein, the Commentators propose the following language modifications to §29.333:

(d) *Vehicle List.* [Between December 1 and December 31] During the first quarter of each calendar year, carriers shall provide the Commission with a current list of all vehicles utilized under its limousine authority which it anticipates will exceed an odometer reading of 500,000 miles during the succeeding twelve months. The list must contain the year, make, vehicle identification number, current odometer reading and registration number for each vehicle. The list shall be mailed to the Commission Bureau of Investigation and Enforcement, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265.

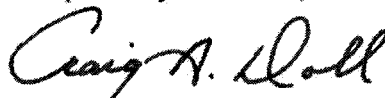
(e) *Vehicle [age] mileage.* Unless otherwise permitted by the Commission, a vehicle with more than 500,000 miles of cumulative mileage registered on its odometer may not be operated in limousine service unless the vehicle is submitted for and passes a special wheels off inspection in the presence of a Commission Enforcement Officer. This inspection shall be in addition to any routine inspection pursuant to the Motor Vehicle Code or 52 Pa. Code §29.406.

²³ With the furnishing of the current odometer reading, the Enforcement Division can prioritize the vehicles to be inspected.

III. Conclusion

For the reasons set forth above, the Commentators respectfully request that this Commission adopt the proposed changes suggested herein. Additionally, the Commentators express their willingness to engage in continuing discussions with Commission personnel regarding these or future changes in regulations impacting the limousine industry.

Respectfully submitted,



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DATED: November 4, 2013