Comments of the Independent Regulatory Review Commission

Pennsylvania Public Utility Commission Regulation #57-296 (IRRC #3033)

Motor Carrier Vehicle List and Vehicle Age Requirements

December 18, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the October 19, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. **Determining whether the regulation is in the public interest; Economic or fiscal impacts; Direct and indirect costs to the Commonwealth and to the private sector; Adverse effects on prices of services or competition; Clarity and lack of ambiguity; Compliance with the RRA.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

Many of the questions on the RAF address the fiscal impact on the regulated community and small businesses. The PUC's responses to several of these questions are not sufficient to allow this Commission to determine if the regulation is in the public interest. Specifically, we seek answers to the following questions:

- What type of and how many small businesses will be affected? (#15)
- What impact will the regulation have financially and economically on small businesses? (#17)
- What are the specific estimated costs and/or savings to the regulated community? How are these amounts derived? (#19)
- What are the estimated fiscal savings and costs associated with implementation and compliance for the regulated community and state government? (#23)
- What is the expenditure history for the Waiver Program for the past three years? (#23a)

- What is the probable effect on impacted small businesses? (#24)

We ask the PUC to provide more detailed information in the RAF submitted with the final-form regulation in response to these questions.

Regarding the limited information that the PUC provided about fiscal impact and adverse effects, we find several of the responses to be contradictory. For example, the PUC states that the financial impact on the regulated community is "potentially adverse" and "will not be significantly adverse." (#25, #17) Likewise, the PUC states, "Estimating the expenditures attributed to the Waiver Program would be very speculative," and later in the same paragraph states that eliminating the Waiver Program "**would save financial and human resources**." (Emphasis in the original. #23a) If estimating expenditures for the Waiver Program would be speculative, wouldn't any estimation of savings be equally speculative? In preparing the final-form RAF, we ask the PUC to ensure that the responses provided are consistent, clear and supported. Also, the PUC should quantify the fiscal savings and costs to the regulated community and state government, and provide an analysis of the savings and costs of implementing this regulation for both the regulated community and state government.

In response to Question #15, the PUC should provide a citation to the relevant provisions of the federal definition of small business that were reviewed in the development of the rulemaking and an analysis of their applicability or inapplicability to the regulation.

Also, in response to Question #14, the PUC did not indicate that it communicated with or solicited input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. To the greatest extent possible, the RRA is intended to encourage the resolution of objections to a regulation and the reaching of consensus. Based on concerns raised in public comments, we strongly recommend that the PUC meet with the regulated community prior to submitting a final-form regulation to work toward resolving commentator concerns.

2. **Section 29.314. Vehicle age. – Economic or fiscal impacts; Adverse effects on prices of services or competition; Reasonableness of requirements, implementation procedures; Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business.**

The PUC's current regulations at Sections 29.314(c) - (d) and 29.333(d) - (e) became effective on August 5, 2006, and impose an age limit of eight model years on call and demand vehicles and vehicles operated in limousine service, respectively, unless otherwise permitted by the PUC. In promulgating the regulations currently in place, the PUC received extensive commentary on the vehicle age requirement that suggested that the requirement would unnecessarily increase industry costs. At that time, the PUC acknowledged the potential undue hardship asserted by the regulated community, and added the waiver exception language for both taxis and limousines.

The PUC now proposes to remove the waiver exemption for both taxis and limousines. The PUC states that review of a waiver request can be a fairly extensive and time-consuming process, and results in a small percentage of vehicles being permitted to operate beyond the regulated timeframe. As before, commentators object to the imposition of an absolute age limit for taxis, citing the potential financial burden from capital loss. Commentators state that the hardship rationale which the PUC found so compelling in drafting the current regulations is equally applicable to the proposed regulations. We agree that eliminating the waiver process could have severe consequences for small carriers. The PUC explains how it will benefit from the proposed change but does not address the impact on companies that seek waivers. We ask the PUC to address this aspect of the regulation in responding to our Comment #1.

The PUC states in the RAF that carriers will have the option to file a waiver of a PUC regulation under 52 Pa. Code Section 5.43 (relating to petitions for issuance, amendment, repeal, or waiver of Commission regulations). Commentators assert that reliance on this option does not eliminate the administrative burden, it simply transfers the burden and may even increase it. Since the PUC does not explain how the option to file a waiver under 52 Pa. Code Section 5.43 is any less extensive or time-consuming than the current waiver process, we question the reasonableness of substituting one waiver process for another. If the PUC moves forward with eliminating the current waiver exemption, the PUC should explain in detail in the final-form RAF and Preamble the process for filing a waiver of a PUC regulation, and how this waiver option is reasonable and will impact both the regulated community and state government.

The PUC states in the RAF that it did not consider any alternative regulatory provisions. As the PUC proceeds with this regulation, we encourage the PUC to consider alternative means of alleviating the administrative burden of the waiver process, including those suggested by commentators. In the final-form RAF, the PUC should explain any alternatives considered, why the alternatives have been rejected and why the regulatory provisions in the final-form regulation are the least burdensome alternative for achieving adequate, safe, efficient and reasonable service..

Finally, the PUC responds in the RAF that it expects the final-form regulation to be effective upon publication. Many commentators express concern regarding the potentially severe financial impact of being forced to retire vehicles upon publication of the regulation. We encourage the PUC to amend the final-form regulation to provide for a delay in the effective date of the regulation to enable carriers to comply without imposing undue financial hardship. The PUC should explain why the length of the implementation timeframe is reasonable for the regulated community and in the public interest.

3. Section 29.333. Vehicle and equipment requirements. – Economic or fiscal impacts; Adverse effects on prices of goods or competition; Reasonableness of requirements.

The PUC proposes to amend limousine vehicle requirements to replace the eight model-year age limitation with a 200,000 mileage limitation, and to remove the waiver exemption, as noted in the previous comment.

Commentators oppose replacing the age limitation with the mileage limitation as proposed, indicating that the 200,000 mileage limitation is too low and could have a dramatic adverse effect on the industry. Commentators state that vehicles removed from service without obtaining a financial return on the investment would create an undue financial burden on service providers. Further, a commentator states that in order to finance the purchase of replacement vehicles, many limousine carriers would have to raise the rates they charge. The PUC responds in the RAF that it may have been too restrictive and may need to re-examine the maximum mileage figure based on public comment. We ask the PUC to reevaluate the mileage limitation to determine the appropriate limit that balances the public interest with that of the fiscal impact and adverse effects on the regulated community. The PUC should explain how it determined the final mileage limitation in the final-form regulation and how that limitation is reasonable and in the public interest.

Regarding removal of the waiver exemption, the relevant concerns and recommendations outlined in Comment #2 should be considered in this section, as well.