



BEFORE THE PENNSYLVANIA  
INDEPENDENT REGULATORY REVIEW COMMISSION

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IN RE: PHILADELPHIA PARKING : IRRC NO. 3103  
AUTHORITY : DOCKET NO. 126-11

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COMMENTS OF JOSEPH GABBAY

Joseph Gabbay, pro se, hereby submits his comments to the above rulemaking proceeding as follows:

***EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS***

The Authority lacks statutory power to require every medallion taxicab and one quarter of all non-medallion taxicabs with service rights in Philadelphia to provide wheelchair accessible taxicab service. The Authority has explicit statutory power to issue 15 medallions restricted to wheelchair accessible taxicab service. See 53 Pa. C.S. §5711(c)(2)(i).<sup>1</sup> In addition to the 15 medallions restricted to wheelchair accessible taxicabs, the Authority also has discretion to issue up to 15 additional medallions per year until the total number of medallions issued reaches 1,750, “with special rights, privileges and limitations applicable to issuance and use as it determines necessary to advance the purposes [of the Act].”

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<sup>1</sup> 53 Pa. C.S. §5711(c)(2)(i) states: “Subject to the provisions of subparagraph (ii), a maximum of 1,600 certificates of public convenience and corresponding medallions for citywide call or demand service and an additional 15 certificates of public convenience and corresponding medallions restricted to wheelchair-accessible taxicab service as provided in this chapter.”

By authorizing the Authority to issue 15 medallions restricted to wheelchair accessible taxicabs, the General Assembly intended to limit the Authority's ability to require other medallion taxicabs to provide wheelchair accessible service. This is a variation of the legal principle expressed in the Latin term: *Expressio unius est exclusio alterius*. If the General Assembly had intended to empower the Authority every medallion taxicab to provide wheelchair accessible service, it would not have limited the Authority power to issue medallions restricted to wheelchair accessible service. By enacted an explicit limit on the number of medallions restricted to wheelchair accessible service, the General Assembly intended to limit the Authority's ability to require other medallion taxicabs to provide wheelchair accessible service.

One could argue that Section 5711(c)(2)(ii) empowers the Authority to issue 135 additional medallions with conditions the Authority deems appropriate, which might include the power to restrict these additional medallions to wheelchair accessible service. Once again, however, if the General Assembly had intended to give the Authority the power to require all medallion taxicabs to provide wheelchair accessible service, it would not have enacted the aforementioned limits on the Authority's power.

It is noteworthy that the General Assembly only empowered the Authority to issue new medallions and certificates restricted to wheelchair accessible service

and was completely silent with regard to changing the conditions applicable to existing medallions and certificates. Restricting a taxicab to wheelchair accessible taxicab service is a material change in a taxicab companies operating rights because of the significant capital investment required to provide such service. The Authority has the power to impose conditions on certificates when it issues them and cannot make material changes in such conditions without just cause and without affording due process.

Likewise, if the General Assembly had intended to empower the Authority to require the six non-medallion taxicab companies with service rights in Philadelphia to provide wheelchair accessible taxicab service, it would have given it explicit power to do so. The PUC granted all six of these companies the right to provide service without restrictions as to wheelchair accessible service and the Authority does not have the power to impose such a material change in operating rights without explicit statutory authority and without affording these companies with due process and just compensation for the loss of the unrestricted right to provide service.

Most importantly, nothing in the General Local Government Code indicates that the General Assembly intended to implement a major policy initiative of the type the Authority has taken upon itself here or to give the Authority the power to do so on its own. The Authority is making policy here, a task that should be

reserved for the legislature. The Authority has frequently overstepped the bounds of its statutory powers and the present case is a prime example of its worst tendencies. It is an executive agency charged with enforcement of regulatory standards, to a law making body.

**THE PROPOSED REGULATION REQUIRES ALL MEDALLION AND NON-MEDALLION TAXICABS TO PURCHASE NEW VEHICLES AND BE WHEELCHAIR ACCESSIBLE IMMEDIATELY**

This rulemaking proceeding deals with an amendment to 52 Pa. Code §1017.4, which to adds subparagraph (d), entitled “Modern taxicabs.” The proposed regulation is very poorly written and is not clear on its face. It requires the reader to refer to several other regulatory provisions before it can be fully understood.

Subparagraph (d) of the proposed regulation provides:

**Beginning on [the effective date of the proposed regulation], the following taxicab vehicle standards shall apply:**

- (1) Every medallion taxicab must comply with §1017.8 (relating to wheelchair accessible vehicle taxicab specifications) as a condition of eligibility for inspection as provided in §1017.2 (relating to preservice inspection).**
- (2) Every partial rights taxicab must comply with §1017.8(c) as a condition of eligibility for inspection as provided in §1017.2.**
- (3) Twenty-five percent, or more, of each partial rights certificate holder’s taxicab fleet must comply with all of the wheelchair accessible vehicle requirements of requirements**

**of §1017.8 as a condition of eligibility of inspection as provided in §1017.2.**

The regulation says that every medallion taxicab and every non-medallion taxicab with rights in Philadelphia must comply with Section 1017.8, relating to wheelchair accessible vehicle taxicab requirements, in order to be eligible for an inspection under Section 1017.2, relating to preservice inspection.

The title of Section 1017.2 refers to preservice inspections, but the language of the regulation itself makes no reference to preservice inspections and merely provides that a vehicle may not perform taxicab service without a TLD inspection sticker as provided in Section 1017.32, relating to TLD inspection sticker required. Section 1017.32 provides that vehicles may be inspected as part of the biannual inspection protocol and the re-inspection requirement for replacement vehicles. It is not clear whether Section 1017.2 applies to all three types of inspection. Thus, it is not clear whether all vehicles that undergo one of these three types of inspections must also comply with the requirement of Section 1017.8, relating to wheelchair accessible taxicabs.

**THE AUTHORITY DOES NOT HAVE STATUTORY POWER TO  
CHANGE THE VEHICLE AGE REQUIREMENT FROM EIGHT YEARS  
TO FIVE YEARS**

Section 5714(a)(4) of the General Local Government Code provides that “[n]o vehicle which is more than eight years old shall continue in operation as a taxicab.” By enacting a vehicle age limitation in the statute, the General Assembly

intended to limit the Authority's power to promulgate regulations imposing more stringent vehicle age limitations. Once again, the legal principle "Expressio unius est exclusio alterius" applies. If the General Assembly had intended to give the Authority power to impose vehicle age limits of less than 8 years for taxicabs, it would not have enacted an explicit limit of 8 years in the statute. Rather, the General Assembly would have granted the Authority unlimited discretion to adopt any age limit it deemed appropriate.

**THE ECONOMIC AND FISCAL IMPACT OF THE PROPOSED  
REGULATION ON THE REGULATED COMMUNITY WILL BE ENORMOUS  
WHILE THE ANTICIPATED BENEFITS SMALL**

Medallion taxicab owners spend a few thousand dollars a year on average to replace vehicles. The proposed regulation would require an initial outlay of close to \$40,000 for a vehicle that must be retired after five years of service in accordance with its own regulatory standards. See 52 Pa. C.S. §1017.8(c)(2) The Authority grossly underestimates the initial costs of these vehicles and wrongly claims that they may remain in service or 8 years, contrary to its own regulatory standards.

More importantly, there simply is no demand for nearly 2000 wheelchair accessible taxicabs in Philadelphia. No other city requires anywhere near this many wheelchair accessible taxicabs and there simply is no acceptable data to support demand for such a number. On the contrary, existing wheelchair accessible

taxicabs that currently exist are underutilized by the disabled community. The Authority is totally unrealistic in assessing the needs of the disabled community as opposed to their wants. If such a need exists, the disabled community has a remedy available to it. It can lobby the legislature to require a specific number of wheelchair accessible vehicles and supply lawmakers with data to support their request. The Authority is taking on the role of policy maker where it has no authority or power to do so. This is a policy decision of such a substantial nature that it requires legislative review.

**THE AUTHORITY'S VEHICLE AGE LIMIT IS AT ODDS WITH THE PUC'S NEWLY ENACTED AGE LIMITATION**

The PUC recently adopted a regulation increase the vehicle age limit from eight to ten years. Obviously, the PUC does not share the same concerns as the Authority in terms of what is necessary to maintain clean, safe, and reliable taxicab service in this Commonwealth. Automotive engineering has improved dramatically over the last few decades and cars last longer than they ever did. The PUC has recognized this economic reality and has taken a progressive view on regulatory standards without sacrificing public convenience, comfort and safety. The Authority has not acceptable data to support the vehicle age limitations that they propose in this rulemaking.

**THE AUTHORITY IS NOT IN THE BUSINESS OF REGULATING COMPETITION**

Although the Authority's concern for the taxicab industry's ability to compete is endearing, the Authority is not in the business of regulating competition, but rather exists to ensure that service is clean, safe, and reliable. The Authority takes a condescending tone in its Regulatory Analysis Form, accusing the taxicab industry of an unwillingness to voluntarily upgrade and improve the quality of taxicabs. The Authority already imposes the highest standards on taxicab service in this Commonwealth and its standards exceed the standards that are applied in most cities. It is true that taxicab owners don't go out to buy new Bentley's to upgrade and improve their service, but then again they aren't required to. Their unwillingness to spend far more than is required, prudent or feasible is not a justification for a regulatory standard and suggesting that it is raises questions about the competency and management of the Authority.

The most amusing part of the Authority justification for its new regulation is its argument that costly new regulations are necessary to enable taxicabs to compete with illegal services, such as Uber and Lyft, which don't have to comply with any standards. In the Authority's mind, requiring taxicab owners to spend tens of thousands of dollars more in compliance cost will somehow enable them to compete more vigorously than unregulated gypsy operations. The economic reasoning of the Authority in this instance is simply absurd.



For all of the foregoing reasons, IRRC should reject the Authority's proposed regulation.

Respectfully submitted,

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