

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, June 19, 2014
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The June 19, 2014 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Mizner at 10:06 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: John F. Mizner, Esq., Chairman
 George D. Bedwick, Vice Chairman
 W. Russell Faber

Telephone: Dennis A. Watson, Esq.

Absent: Lawrence J. Tabas, Esq.

II. APPROVAL OF THE MAY 22, 2014 PUBLIC MEETING MINUTES

Chairman Mizner asked for a motion for approval of the May 22, 2014 public meeting minutes, as submitted. Vice-Chairman Bedwick made the motion and Commissioner Faber seconded, and the motion passed 4-0.

I. NEW BUSINESS

A. DEEMED APPROVED

1. No. 3024 Department of Public Welfare #14-536: Rate Setting for County Nursing Facilities that Change Ownership

B. ACTION ITEMS

1. No. 3020 Pennsylvania Higher Education Assistance Agency #58-24: Student Financial Aid

James Smith, Regulatory Analyst, explained this regulation addresses certain requirements and definitions for student and institutional eligibility for the Pennsylvania Higher Education Grant Program. This regulation is being updated to comply with current standards.

Christine Zuzack, Vice President, State Grant and Special Programs, Leo Pandeladis, Director of Enterprise Compliance, Legal and Compliance Services and Stacey Weego Cameron,

Attorney, Legal and Compliance Service Division, Pennsylvania Higher Education Assistance Agency (PHEEA), were present to answer any questions.

Vice-Chairman Bedwick made a motion for approval. Commissioner Faber seconded, and the motion passed 4-0.

2. No. 3008 Environmental Hearing Board #106-10: Practice and Procedure

Scott Schalles, Regulatory Analyst, stated the regulation amends the existing practice and procedure regulations from the Environmental Hearing Board and adds alternate means of filing appeals for future regulations.

Thomas Renwand, Chairman and Chief Judge, Richard Mather, Judge, and Maryanne Wesdock, Senior Assistant Counsel, Environmental Hearing Board, were present to answer any questions.

Vice-Chairman Bedwick inquired about the outcomes of the Rules Committee meeting regarding concerns about the section on subpoenas put forth by PennFuture. Ms. Wesdock said that these recommendations were set to be adopted after discussion of the Rules Committee. It did not make it into this rules package, she noted, but it will be included in the next one. Mr. Mather pointed out that the goal of including it in the next rules package is to allow for formal public comment.

Vice-Chairman Bedwick questioned the reasoning behind the requirement that Notice of Appeals that are filed by fax must also be served to all relevant parties through the same method. “It doesn’t make a lot of sense that how I choose to file should have any determination in how I serve,” he remarked. Ms. Wesdock responded, “The requirement was put in really to benefit these other parties so that they’re getting the document as quickly as the Environmental Hearing Board is receiving it.” She noted that this was intended to increase parity in the dissemination of documents, and is a general recommendation rather than a steadfast rule. Commissioner Bedwick encouraged them to evaluate this, as it currently reads as a “must provision”. Commissioner Watson requested clarification that PennFuture was referencing the manner in which to obtain the attendance and documents from parties. Ms. Wesdock said that the rule itself was captioned “subpoenas”, thus the goal was to clarify that other rules concerning other means of discovery were also included.

Chairman Mizer made a motion for approval. Vice-Chairman Bedwick seconded, and the motion passed 4-0.

3. No. 3039 Philadelphia Parking Authority #126-6: Taxicab Medallion Sales by the Authority

James Smith and Corinne Brandt, Regulatory Analysts, explained this final rulemaking implements amendments made by Act 119 of 2012 (Act 119) and establishes the public bidding process through which the Philadelphia Parking Authority (PPA) will sell taxicab medallions.

Dennis Weldon, Jr., General Counsel, Jim Ney, Director, Taxicab and Limousine Division and Christine Kirlin, Manager of Administration, Taxicab and Limousine Division, PPA, were present to answer any questions.

Ms. Brandt provided an overview of the rulemaking that implements statutory amendments in Act 119 of 2012 that authorize and establish a bidding process for PPA to issue up to 150 new taxicab medallions over the next ten years. Of this total allotment, a certain number are statutorily required to be wheelchair-accessible vehicles.

Mr. Smith pointed out that the Commission received written comments on this final regulation from the Pennsylvania Taxi Association, Danielle Friedman, MoneyMax Funding, Freedom Taxi, Liberty Resources, and Representative Nicholas Miccarelli (R – Delaware). “The House and Senate have deemed the regulation approved at this point,” he stated. “We have no remaining issues on the regulation.”

Mr. Weldon discussed the change in jurisdiction of Philadelphia’s taxicab and limousine service from the Public Utility Commission (PUC) to PPA in 2005. “While there are currently 1,600 regulated taxicab medallions authorized to operate in the city, only eight vehicles are wheelchair-accessible.” As a result, he explained that the legislature authorized the addition of up to 150 new taxicab medallions over the next ten years to bolster the amount of handicap-accessible vehicles. “It’s a very big issue, and it’s something we’ve been dealing with the disabled community for quite some time,” he stated. “This is the legislature’s attempt to do two things: alleviate the problem and develop data on usage patterns.” Importantly, he noted that this is a generic medallion sale regulation that would apply to all medallion sales regardless of accessibility attributes. PPA opted to utilize the public bid process, he shared, as it is the “preferred process” that has been used throughout the Commonwealth for various services and other cities for taxicab medallions. He provided a brief overview of the process that would require 60 days notice, a sealed bid submission process, and opening of bids in a public forum.

Mr. Weldon pointed out that the ability to protest the transfer or authorize the sale of new taxicab medallions through PPA has been a consistent, continuing concern within public comments. He submitted that there is one particular ownership group that has elected to protest every single medallion, and these were determined to be universally baseless. “There’s only so much that we can do because in America you have due process,” he said. “We believe we’re getting there, and over the next several months we’ll begin to resolve that problem; however, there is no way that we can totally eliminate the ability of people to file protests to certain transactions.” He then referenced the ongoing concern of confidentiality, particularly with regards to bid amounts. Mr. Weldon asserted that brokers are required to keep this information confidential, yet there is only so much that can be done to prevent “such nefarious conduct”.

Vice-Chairman Bedwick remarked, “No matter what you write, the chances are that the mind of man will find ways around it.” He commended the efforts to infuse protection and transparency into the process. Vice-Chairman Bedwick then asked whether the constant protests may impact the ultimate value of taxicab medallions in transfers and sales. Everything that happens in the taxi community is based on money, Mr. Weldon responded. He observed that individuals that protest generally argue that they provide better taxicab service than other people, noting that this is “totally speculative.” Mr. Weldon pointed out that Philadelphia is a “closed”

system, as all taxicab operators must charge the same rates. Vice-Chairman Bedwick said that the potential for litigation and procedural challenges in attaining a medallion may affect the ultimate value placed on the taxicab medallion itself.

Vice-Chairman Bedwick commented that many of the issues discussed so far could be addressed through disclosure in the bidding process, asking whether PPA would be willing to look at this potential resolution. Mr. Weldon responded, "I think that's a very good idea, and I think that probably part of the bid packet will have instructional information."

Vice-Chairman Bedwick asked about how protests affect the time limits attached to commitment letters. Mr. Weldon said that PPA has tried to evaluate all potentialities, and a protest would involve an automatic adjudication process. If undue hardship was placed on the bidder in this process, he explained, there would be a process that they could ask the judge to release them from the bid.

Commissioner Faber asked how many of the initial taxicab medallions offered must be wheelchair-accessible. Mr. Weldon said that 45 are authorized by statute; furthermore, he said that PPA's board has committed to requiring all 150 new taxicab medallions to be wheelchair-accessible vehicles. Commissioner Faber also asked whether the winners are announced immediately upon opening the sealed bids. Mr. Weldon confirmed this. Following up, Commissioner Faber asked about how deposits attached to unsuccessful or disapproved bids are returned to bidders. Mr. Weldon said that checks are immediately returned for unsuccessful bids, and are never cashed. There is an existing policy that winning bids that are not ultimately approved forfeit any initial fees.

Vice-Chairman Bedwick asked how deposits are handled by PPA. Mr. Weldon answered that PPA retains the sealed checks, but those from unsuccessful bidders are never cashed.

Commissioner Watson asked when the number of taxicab medallions was last changed in Philadelphia. Mr. Weldon said that the number of taxicab medallions was increased from 1,400 to 1,600 in 2000 by the PUC. Commissioner Watson asked whether existing medallions may be transferred to family members without formal auction or transfer processes with PPA. Mr. Weldon explained that every taxicab medallion is currently held under limited liability corporations, and the current regulations require a formal process for transfers. He clarified that they are not required to transfer the medallion to PPA, since it is their limited asset. Commissioner Watson asked whether there was any consideration given to using a "bid bond" rather than bid deposits. Mr. Weldon said that there was not consideration given to that, and other cities have used a cash deposit.

Chairman Mizner invited individuals forward for public comment.

Danielle Friedman, Esq. representing the Philadelphia Cab Association (PCA), said that the due process afforded through the protest process comes at a significant financial cost. She said that PCA would like to see wheelchair-accessible taxicabs throughout the city, but the protest issue must be addressed first. Ms. Friedman then argued that PPA's posting of revisions to two forms (SA-1 and MA-1) to the internet only hours before the hearing did not allow proper

time for internal voting and public comment. “We haven’t had a chance to thoroughly review the forms and determine whether everything we addressed was revised in these forms,” she stated. “I don’t know if the publishing of these forms complies with the Commonwealth Document Law.” Ms. Friedman further said the confidentiality issues regarding commitment letters are not only restricted to brokers, but also banks handling these documents.

Chairman Mizner remarked that banks are subject to a “significant number” of federal privacy laws, and are privy to an abundance of financing information like this on a regular basis. Alex Friedman, President, Pennsylvania Taxi Association, asserted that the funding process often involves other private entities and backers. Additionally, he shared that financing often requires a percentage of the total bid; thus, it is “easy” to figure out the total bid amount.

Returning to Form SA-1, Ms. Friedman then discussed the comingling of property rights affiliated with taxicab medallions and the operational rights affiliated with Certificates of Public Convenience. “We don’t feel as though the Form or the auction distinguishes these two rights as much as they should be,” she submitted. She said that the auction is for the taxicab medallion, but a protest concerns the Certificate of Public Convenience that prevents the operational rates under the actual medallion.

“I believe that we cannot promulgate this regulation until we have a clear structure for medallions,” Mr. Friedman asserted. “The infrastructure of the market has completely changed.” He said that Act 94 addresses the issue of property rights versus operational rights, yet these two issues have since been comingled to “excess”. Mr. Friedman argued that there must be increased openness in the transfer and distribution of taxicab medallions. He concluded, “Unless it is done in an open forum with complete transparency, these auctions are going to cause problems.”

Regardless of the regulations, Chairman Mizner commented that there are always going to be market pressures that lead to bidding beyond what some banks may agree to lend. “I don’t see any type of regulation that could completely protect against that,” he opined. Mr. Friedman said that an open, public auction process would prevent collusion while confirming accurate market values.

Vice-Chairman Bedwick asked whether protests allow the ultimate winner to seek attorney fees and legal costs from the protesting party. Danielle Friedman said that PPA could seek penalties, but wasn’t aware of similar opportunities for the other party. She submitted that the Court of Common Pleas would be a more appropriate venue to address these protests. Chairman Mizner interjected that the resolution strategy to use the Court of Common Pleas would do nothing to address the concerns about the initial cost of medallions.

Vice-Chairman Bedwick asked whether you can protest the issuance of a taxicab medallion. Ms. Friedman said that the operational and property rights are intertwined, which is the core issue. She said that protesting operational rights seems like an appropriate opportunity for due process, though property rights concerning the medallion are not. Vice-Chairman Bedwick asked how this protest issue could be resolved prior to implementing the regulation. Ms. Friedman suggested removing the option to protest taxicab medallion transfers, which would align with rules previously in place under the PUC. “There is no relief that PPA can grant that

another court can't," she posited. Noting that the original PPA proposal only allowed companies that held Certificates of Public Convenience could bid. Vice-Chairman Bedwick asked whether this would have resolved the protest issue. Ms. Friedman responded, "There's no guarantee that would have resolved the protest issue." She argued that any entity deemed fit to operate a taxicab medallion by PPA should be allowed to do so.

Chairman Mizner remarked that PPA may not know everything about these entities, and information may come to light that warrants a reevaluation. "I'm getting the impression that you all want a unique world for taxicab drivers in Philadelphia that operates outside the laws of physics and business practice and privacy rules," he said. Mr. Friedman argued that the current protest structure will allow future manipulation of the market. Ms. Friedman reiterated that the overwhelming majority of protests boil down to contractual issues, which could be settled by the Court of Common Pleas.

Chairman Mizner put forth that this would not be less cost-effective, nor would it expedite the process of getting more wheelchair-accessible vehicles in Philadelphia. "I don't understand how you think that going to a new forum that's going to be more costly than PPA is better off for taxicab drivers or owners," he concluded.

Vice-Chairman Bedwick inquired whether a separate Certificate of Public Convenience is required for every individual taxicab medallion. Mr. Friedman responded that these are issued for each medallion, so an existing company that purchases an additional taxicab medallion would be required to get an additional Certificate of Public Convenience.

Chairman Mizner pointed out that any delay in moving forward with this regulation will further delay access to taxicabs for disabled individuals in Philadelphia. Mr. Friedman argued that passing this regulation will potentially cause a greater delay, as it will enable a very litigious process of repeated protests moving forward. He committed to upgrading 45 current taxicabs in the city to be wheelchair accessible.

Vice-Chairman Bedwick asked staff whether the forms discussed previously are subject to the Commonwealth Document Law. Leslie Lewis Johnson, Chief Counsel, said that they are cross-referenced and not a part of the regulation, thus they are not required to go through the formal review process. Vice-Chairman Bedwick urged both parties to address these forms in the near future.

David Alperstein, Executive Director, Greater Philadelphia Taxi Association, supported the requirement for a ten percent deposit on all bids to prevent certain improprieties. At the same time, he suggested that the sealed bidding process be modified to open and post the highest bids for each taxicab medallion on PPA's website. Instead of collecting bids on individual taxicab medallions, he further recommended selecting the top overall bids throughout the process. "I think doing this would help the banking system because they would see a better uniformity of these bids," he submitted. "Furthermore, that particular way of doing it could allow for less paperwork for the bidders and less paperwork for PPA." The current structure in the regulation also requires individuals to set up a corporate entity, he explained, which necessitates a

significant upfront cost that may be superfluous if they are not a winning bidder. In contrast to the previous testimony, he lauded the protest system as an invaluable tool for due process. Vice-Chairman Bedwick acknowledged the suggestions, and he asked whether the “bulk-bidding” suggestion may present difficulties as there is no statutory requirement that future taxicab medallions are for wheelchair-accessible vehicles. Mr. Alperstein said that any broad bidding process should be for the same type of medallion, and that general economics of bidding should ensure that it remains competitive. He observed that there is a very limited supply of taxicab medallions, so electing to take the top overall bids would not likely lessen the value of this commodity.

Eileen Sable, a resident of Philadelphia, said that the “nitpicking and bickering” is preventing the disabled community from having access to reasonable taxicab accommodations in the city. She said that this is a civil rights issue that is inherently human, and it must be corrected. Glenda Erby, a resident of Philadelphia, said that her ability to venture out of her home is limited by the lack of independent transportation opportunities for those in wheelchairs. As a result, she said she is forced to manage her time in accordance with when she can schedule transportation services. “When you’re an active person, it’s hard waiting at home if you want to go somewhere,” she shared.

German Parodi, a resident of Philadelphia, reiterated that the city has not expanded its taxicab infrastructure in over a decade. He explained that there are over 22,000 wheelchair users in Philadelphia, and the eight wheelchair-accessible taxicabs are unacceptable. He commended PPA for promising that the 150 additional taxicab medallions will all be attached to wheelchair-accessible vehicles. He asserted that it is important to fix this “huge discrimination” as soon as possible.

James Walker, Associate, MoneyMax funding, argued that the current structure of protest benefits individuals interested in blocking progress for personal gain. “I can see these medallions going up for bid, and if certain people don’t get what they want they can hold up the process,” he said. While the expansion of wheelchair-accessible vehicles is important, he cautioned that the protest process must be addressed. He concluded, “It’s going to be a problem; I can see it already.”

Vice-Chairman Bedwick questioned if there is a means through PPA to assess attorney fees and costs on a losing party in a protest. Mr. Weldon stated “no, although it’s a very good idea.” Vice-Chairman Bedwick asked if PPA would expect a court challenge if the regulation would be revised to state that there could not be a protest. Mr. Weldon responded “yes.” Vice-Chairman Bedwick questioned if the issue would take years to resolve in courts if the protest matter were challenged. Mr. Weldon stated “easily, yes.”

Commissioner Faber asked if there are separate regulations under PPA to deal with the protest process. Mr. Weldon responded “yes.”

Chairman Mizner questioned if there is a lot of abuse of the protest process for illegitimate process. Mr. Weldon explained that the first medallion protest occurred around six months ago. “This is a relatively new phenomenon that is really a manifestation of fighting that’s going on in the regulated community,” he stated. “When we started regulating, we put a very

high fee on the cost to file a protest. The PUC is \$50. For the Parking Authority you have to pay \$2,500 just to file a protest. We were criticized for that...there was a reason we did it and it was to try to discourage baseless protests.” He noted that there would be an opinion from the Parking Authority Board on the issue soon.

Turning back to the issue of attorney fees and costs, Vice-Chairman Bedwick asked if a statutory change is required or could PPA address the matter through its regulatory process. Mr. Weldon indicated that PPA could address it through regulation. “It is something we will explore,” he stated.

Vice-Chairman Bedwick made a motion for approval. Commissioner Faber seconded, and the motion passed 4-0.

IV. OTHER BUSINESS

1. Approval of Invoice No. 01-2014

Commissioner Mizner made a motion to approve payment of Invoice No. 01-2014. Vice-Chairman Bedwick seconded, and the motion passed 4-0.

2. Approval of Vouchers

Commissioner Faber made motions to approve vouchers and expenses for the period May 22, 2014 through June 18, 2014. Vice-Chairman Bedwick seconded, and the motions passed 4-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Mizner announced the next public meeting is scheduled for Thursday, July 10, 2014, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Mizner announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Mizner announced the meeting adjourned at 12:30 p.m.