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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 27, 2016

L-2015-2507592

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
2nd Floor, North Wing
Harrisburg, PA 17120

Re: Regulation #57-312 (IRRC #3135) (L-2015-2507592)
Pennsylvania Public Utility Commission
Reduce Barriers to Entry for Passenger Motor Carriers

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director
sfh
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert W. Godshall, Majority Chairman, House Consumer Affairs Committee
Honorable Peter J. Daley, II, Minority Chairman, House Consumer Affairs Committee
Amy Elliott, Esq., Office of Attorney General

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Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-312 (IRRC #3135)

Reduce Barriers to Entry for Passenger Motor Carriers

April 27, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the February 27, 2016 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (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. Determination of whether this regulation is in the public interest.

The PUC states in the Preamble's *Executive Summary*, in part:

Upon consideration of the acknowledged benefits of increased competition among passenger motor carriers and advances in technology, the Commission believes that it is appropriate to reduce the current barriers to entry for qualified applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. Rather than determining public need by means of a complex, costly and time consuming administrative process, public need or demand will be determined in the marketplace by competition among passenger carriers in regard to price, quality and reliability, as well as the experienced demand for their services by consumers who may freely choose among those competing carriers.

Similarly in regard to limited competition, this regulation streamlines the supporting financial information required to change tariffed rates and eliminates territorial restrictions that accompany a carrier's certificate of public convenience. These objectives are reflected in proposed deletions of portions or all of 52 Pa. Code §§ 1.43, 3.381, 3.382, 3.383, 3.384, 5.235, 23.64 and 23.68. The remaining amendments are additions to clarify the applicability of the regulation to passenger carriers based on the number of passenger and limousine carriers, as well as some editorial amendments.

The Preamble also explains that passenger carriers will continue to be required to establish that they have the technical and financial ability to provide the proposed service safely, reliably and legally, and that they are fully insured. In addition, passenger carriers will continue to be

required to submit filings notifying the Commission of tariff changes and to provide the basic operational and financial data to support those filings.

The proposed amendments will substantially alter established practice in the passenger carrier industry with tangible results. In this instance, the rulemaking eliminates many protections the PUC formerly found to be in the public interest. Removal of some of these protections has raised concerns expressed in comments by the House Consumer Affairs Committee, Legislators and current certificate holders.

Among the issues raised in public comments are questions of whether the regulation meets the statutory provision at 66 Pa.C.S. § 1103(a) which requires a PUC finding that "granting such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public" This regulation is intended to reduce barriers to entry and introduce limited competition. However, the commentators explain that in rural areas they provide transportation services to persons who either do not drive or cannot afford a car, such as elderly and disabled persons. Passenger carrier services are needed to provide these people with transportation to medical appointments, shopping and recreational activities. Additionally, commentators state and provide documented support that in every jurisdiction where taxi deregulation has occurred, the consumer has suffered with poor service, decrepit fleets of taxis and higher prices. How has the PUC determined that the amendments to introduce competition will provide this portion of the rural population with the transportation services they need in the long term?

The PUC does not convincingly substantiate its statement in the Preamble that "Upon consideration of the acknowledged benefits of increased competition among passenger motor carriers and advances in technology . . ." Based on the information provided in the proposed regulation, we believe further information and explanation is needed to establish that competition will adequately address and resolve these concerns. In regard to our criteria to determine whether a regulation is in the public interest, we ask the PUC to better establish that this regulation and the accompanying information fully explore and address whether the regulation represents a policy decision of such a substantial nature that it requires legislative review; the economic impact of the regulation; protection of the public health, safety and welfare; need for the regulation; implementation procedures; whether the regulation is supported by acceptable data and whether a less costly or less intrusive alternative of achieving the goal of the regulation has been considered because this regulation will impact small businesses.

2. Legislative Comment – Policy decision of such a substantial nature that it requires legislative review; Need; Economic impact; Reasonableness; Protection of the public; Implementation procedures.

House Consumer Affairs Committee

Representative Godshall, Chairman of the House Consumer Affairs Committee and Representative Daley, Minority Chairman, submitted a joint comment asking the PUC to withdraw the proposed regulation. They believe the proposed regulation is premature because Senate Bill 984 (SB984) is pending in the legislature which will modernize Pennsylvania's transportation industry, and there will have to be integration of SB984 and the PUC's regulations. We ask the PUC to establish how the regulation is in the public interest in relation

to our consideration of whether the regulation represents a policy decision that requires legislative review and how the regulation will be implemented should SB984 become law.

Comments by Representative Hanna, Democratic Whip, Representative Harper and Representative Murt

Representative Hanna commented on behalf of Lock Haven Emergency Medical Services and volunteer ambulance services throughout Pennsylvania. Representative Hanna asks that the PUC review any possible negative effects of ambulatory transportation in rural communities before updating any transportation regulations. He states that local volunteer ambulance companies need to have access to non-emergency revenue in order to remain operational.

Representative Harper commented on behalf of Transnet which is concerned the proposed regulation will harm their ability to provide transportation for seniors and disabled people. She asks the PUC to consider the effect of the proposed regulation on Transnet and the population it serves.

Representative Murt opposes the proposed regulation because it is basically deregulation and will undermine established businesses. He states the proposed changes would destabilize and damage our paratransit industry.

We will review the PUC's responses to these legislative comments as part of our consideration of whether the final regulation is in the public interest.

3. Public Comment – Consistency with statute; Need; Economic impact; Impact on small business; Acceptable data; Reasonableness; Protection of the public; Implementation procedures.

There were 13 separate public comments submitted during the public comment period that closed on March 28, 2016. The issues raised in the public comments include:

- There is a need to regulate the number of passenger carriers and territories, and existing entry standards are not burdensome;
- Competition in the taxi industry has been tried elsewhere and it does not work and the PUC has no empirical data or evidence to the contrary which supports its move to deregulate;
- Competition will have a negative effect on small businesses that will far outweigh any benefit to the public;
- There is already substantial competition in the industry, and the industry is saturated with carriers;
- Competition can be a disincentive to operational investment;
- How will geographical limits and special conditions currently specified in certificates and tariffs be changed?;

- Requiring tariff approval while opening entry to the marketplace creates a situation that is not conducive to free market pricing;
- Substantial investment in operations and equipment will be placed in jeopardy if the proposed amendments are implemented;
- There will be more protests based on “fitness” and “propensity for safe operations” contrary to the PUC’s projected cost savings of \$4.5 million;
- Eliminating territorial restrictions would actually erect new barriers to entry for qualified applicants because any provider within the state would have standing to challenge applications; and
- Emergency medical services will be harmed if they lose the revenues they generate by also providing passenger carrier services.

Again, this rulemaking eliminates many long standing protections the PUC formerly found to be in the public interest and relies upon competition to provide services. The public commentators challenge many of the basic principles the PUC uses as the basis for amending the regulation. In regard to the arguments presented by public commentators who oppose the amendments, the PUC should further explain how the amendments will result in better services and how the merits of the amended regulation outweigh the many concerns presented in the public comments. We also ask the PUC to explain how it will monitor the success or failure of an amended regulation and what actions it may take in the event the amendments do not provide the results that were intended.

4. Elimination of territorial Rights – Economic impact; Reasonableness; Implementation procedure.

This rulemaking eliminates PUC-regulated passenger carrier’s territorial restrictions that accompany a carrier’s certificate of public convenience and the Preamble states that by eliminating the current territorial restrictions “passenger carriers will be deemed to have statewide authority.” There are two agencies that regulate passenger carriers in Pennsylvania. The Philadelphia Parking Authority (PPA) regulates passenger carriers within the City of Philadelphia, and the PUC regulates the remainder of Pennsylvania’s passenger carriers. We note that the PUC stated in the response to Regulatory Analysis Form (RAF) Question 13 that this regulation will not affect regulations of other state agencies. This raises questions as to what the PUC means by “statewide authority.” If PUC-regulated passenger carriers are granted “statewide authority,” does that affect territories within PPA’s jurisdiction? Can a PUC-regulated passenger carrier perform call and demand services within the City of Philadelphia? We ask the PUC to further explain what is meant by “statewide authority” for the passenger carriers it regulates and what effect it has on PPA-regulated passenger services.

5. Required supporting documentation – Compliance with the Regulatory Review Act; Economic impact; Acceptable data; Implementation procedure; Reasonableness.

The comments of Yellow Taxi of Pittsburgh challenge information the PUC provided in the responses to RAF Questions 7, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 23(a), 24, 25, 26, 27, 28 and 29, as well as the proposed rulemaking order. The PUC should review these comments, as well as its other RAF responses, and revise the RAF responses and its order as appropriate to provide the best information possible in each circumstance.

6. Deletion of Sections 3.383, 3.384 and 3.385 – Consistency with statute.

The PUC is deleting Section 3.383, 3.384 and 3.385 that deal with Temporary Authority and Emergency Temporary Authority. Subsection 3.383(a) explains and quotes the controlling legislation of 66 Pa.C.S. §§ 1103(d) and 2509 which state in regard to “Temporary authority” that the PUC “under such regulations as it shall prescribe may . . . consider and approve certificates of public convenience” Given the wording of the statute, the PUC should explain its authority to delete these regulatory provisions and how reliance on 52 Pa. Code §§ 3.1 – 3.12 will adequately meet the statute.

7. Miscellaneous Clarity.

- The term “small passenger carrier” is replaced in Section 23.68 with the term “passenger carrier.” Should Section 23.69 Stay-out provision also be amended or deleted? Additionally, should the definition of “small passenger carrier” in Section 23.1 be amended or deleted?
- The term “small passenger carrier” is replaced in Section 23.68 with the term “passenger carrier.” Should Section 23.69 Stay-out provision also be amended or deleted? Additionally, should the definition of “small passenger carrier” in Section 23.1 be amended or deleted?