

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission,	:	
Bureau of Transportation and Safety	:	
	:	Docket No. C-2010-2175330
Vs.	:	
	:	
Germantown Cab Co.	:	

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**RESPONDENT’S BRIEF IN SUPPORT OF  
MOTION FOR DECLARATORY ORDER**

Respondent, Germantown Cab Co., by and through its attorney, Michael S.

Henry, Esquire, hereby submits its Main Brief in the above matter.

I. Introduction

This is an enforcement action initiated by the Bureau of Transportation and Safety (“BTS”) against Respondent, Germantown Cab Co. (“Germantown”) for various violations allegedly found during the annual inspection of a portion of Germantown’s fleet conducted at its facility at 5350 Belfield Avenue, Philadelphia, Pennsylvania. On August 3, 2010, the BTS filed and served a complaint upon Germantown and, on August 23, 2010, Germantown filed a timely answer denying the allegations of the Complaint.

A hearing was held on October 25, 2011, before the Honorable Cynthia W. Fordham, Administrative Law Judge (“ALJ”), wherein the BTS presented the testimony of four witnesses and Germantown presented the testimony of two witnesses. During the hearing, the issue of the Commission’s jurisdiction over this matter arose and, subsequent to the hearing, the ALJ ordered Respondent to file a Motion to Dismiss regarding the jurisdictional issue, along with its Main Brief. Germantown now submits its brief and motion as directed.

## II. ISSUE PRESENTED

Whether the Commission has exclusive jurisdiction and regulatory authority over Respondent subsequent to the effective date of Act 94?

Suggested Answer: Yes.

## III. TESTIMONY OF THE WITNESSES

The Commission's first witness was Officer Freda Culver.

Officer Culver testified that she is and has been an enforcement officer with the Public Utility Commission for 10 years. N.T. 6, ln 16-20. She stated that her duties include inspection of taxicabs, buses, limousines, and trucks. N.T. 7, ln 8-11.

Exhibit A was marked for identification purposes and Officer Culver identified it as the cover sheet for the annual inspection form, which contains a summary of violations. N.T. 8, ln 4-9. She stated that she prepared the document and conducted inspections along with Officers Kane, Miller, Myers and Zinczenko. N.T. 8, ln 14-22.

Officer Culver stated that there 90 vehicles in Respondent's fleet and that the Enforcement Officers had inspected 49 of them. N.T. 2-5. She stated that 73 violations were found, including 25 mechanical violations, 15 meter violations, 22 passenger violations, and 11 other violations. N.T. 9, ln 6-13. She stated that 15 of these violations were corrected at the time of the inspection. N.T. 9, 14-16.

The inspection took place at Respondent's garage facility in Philadelphia, as is the common practice of the Commission. N.T. 9, ln 19 – N.T. 10, ln 1. The inspection took place during two days, April 26<sup>th</sup> and 27<sup>th</sup> of 2010. N.T. 10, ln 2-8. Respondent had 2-3 days advance notice of the inspections. N.T. 10, ln 5-10.

With regard to specific violations, Officer Culver testified that her inspection of one of the taxicabs revealed a violation of 52 Pa. Code 29.314(b), which requires a taxicab to have a meter. N.T. 10, In 22-23. She testified that this taxicab was not equipped with a meter programmed to calculate what she referred to as Rate 2, which is the rate in Respondent's tariff on file with the Commission. N.T. 10, In 23-25. Officer Culver testified that this taxicab also had a defective tire. N.T. 11, In 11-13. She identified this vehicle as Taxicab No. G-5. N.T. 12, In 2-3.

Officer Culver explained that Rate 1 applies to medallion cabs and Rate 2 applies to partial rights cabs. N.T. 11, In 4-8. Officer Culver identified this vehicle as a 2003 Ford, Registration number TX43620, cab number G-5. N.T. 12, In 2-3.

Officer Culver also testified about the report of vehicle G-24, a 2002 Ford, registration number TX43425. N.T. 12, In 10-11. Officer Culver identified her signature on the report. N.T. 12, In 5-7. She testified that the rear door and back-up lights of this vehicle was inoperable. N.T. 12, In 14-16.

Officer Culver also testified about the report of vehicle G-44, a 2002 Ford, registration number TX43188. N.T. 12, In 21-22. Officer Culver identified her signature on the report. N.T. 12, In 23-25. She testified that the vehicle was in violation of Title 52:29.314(b), because the vehicle is required to be equipped with the meter and the rate 2 was inoperable. N.T. 13, In 4-7. Officer Culver further testified that there was only one zoned meter in the cab and that it was Rate 1. N.T. 13, In 8-15.

On cross-examination, Officer Culver testified that she worked as an enforcement officer before the Parking Authority took over regulation of medallion taxicabs in Philadelphia. N.T. 13 In 22 – N.T. 14 In 3. Officer Culver testified that she was aware of

Act 94, the legislation that transferred regulatory control over medallion taxicabs and limousines operating in Philadelphia from the Commission to the Philadelphia Parking Authority (“Authority”). N.T. 14, 5-9. She acknowledged that Act 94 changed the way she did her job. N.T. 14, ln 9-10.

She stated that she performed inspections on medallion taxicabs before Act 94 was enacted. N.T. 14, ln 15-17. She said she was aware that all medallion taxicabs charge a uniform rate. N.T. 14, ln 18-21.

She testified that she was aware that there are taxicab companies other than medallion taxicabs that have operating rights in Philadelphia. N.T. 14, ln 25 – N.T. 15, ln 2. She stated that she was aware that Respondent, Germantown Cab Company, is one of those carriers. N.T. 15, ln 6-11. She stated that she was aware that the carriers also have operating rights outside of Philadelphia. N.T. 15, ln 12-15.

Officer Culver testified that her duties with regard to taxicab companies that had operating rights in portions of Philadelphia, like Respondent, remained the same. N.T. 15, ln 17-25. She said the only thing that changed was “the fact that certain regulations that Respondent had to abide by conflicted with certain regulations he also had to abide by with the PPA.” N.T. 16, ln 1-4. But the Commission inspects Respondent’s taxicabs the same way it inspected them prior to the effective date of Act 94. N.T. 16, ln 5-8. And the Commission applies the same standards when it inspects Respondent’s taxicabs that it applied before the effective date of Act 94. N.T. 16, ln 9-13.

Officer Culver testified that there is a conflict between the Commission’s standards and the Authority’s standards with regard to how the age of a vehicle is calculated. N.T. 16, ln 14-20. She explained that no vehicle that is older than 8 years old

may be used as a taxicab. N.T. 16, ln 21-23. But the Authority and the Commission have different dates for when they consider a vehicle to be eight years old. N.T. 16, ln 22 – N.T. 17, ln 13.

When asked about the rates charged by Respondent, Officer Culver stated that there are two rates on Respondent's meters: Rate 1 and Rate 2. N.T. 17, ln 14-20. She stated that Rate 1 is the rate authorized by the Authority and Rate 2 is the rate authorized by the Commission. N.T. 17, ln 16-20. She acknowledged that medallion taxicabs are required to charge a uniform rate, but that all other taxicabs in the Commonwealth can rates that are different than the rates charged by medallion taxicabs. N.T. 18, ln 8-18. She stated that she believed Respondent only charged one rate on its meters prior to the effective date of Act 94. N.T. 19, ln 17-20.

Officer Culver stated that she determined that Respondent was operating 90 vehicles based on information provided by Respondent at the time of the inspection. N.T. 20, ln 9-13. Officer Culver stated that all of Respondent's vehicles are required to have two rates on its meters if they are operating within Philadelphia and in the surrounding counties; although she was not sure whether all of Respondent's vehicles operate within Philadelphia. N.T. 20, ln 13-20.

Officer Culver was not sure whether Respondent had two different operating territories prior to the effective date of Act 94 or of the boundaries of Respondent's operating territory as described in its tariff. N.T. 20, ln 21, N.T. 21, ln 15.

When she does field inspections on limousines, Officer Culver said that she asks to see the vehicle's itinerary to determine if she has the jurisdiction to inspect it. N.T. 21, ln 18- N.T. 22, ln 2.

She testified that it is her understanding that all of the taxicabs that Germantown operates are subject to inspection by the Commission. N.T. 22, In 21-24. She testified that she does not know of any vehicles that they operate solely under their PPA jurisdiction. N.T. 23 In 25 – N.T. 24, In 3. She testified that while performing inspections she has seen PPA inspection stickers on Respondent's vehicles. N.T. 23, In 4-7. She testified that, although she is not sure if all Respondent's vehicles have the PPA inspection sticker on them, she cannot recall inspecting vehicles without the PPA sticker. N.T. 23, In 8-13. She testified that she does not know if Respondent is allowed to designate certain vehicles which would be exclusively in either the PPA's or PUC's jurisdiction, does not know if Respondent in fact has vehicles that stay in the counties and vehicles which only go into Philadelphia. N.T. 23, In 14 – N.T. 24, In 14. She stated that a vehicle that does not go into Philadelphia would not need two rates. N.T. 23, In 21-N.T. 24.

Officer Culver testified that she did not know whether Respondent's tariff contains two rates, but she issued a violation to Germantown for not having Rate 2 in their meters, which she testified is the PUC rate. N.T. 24, In 15-N.T. 25, In 3. She stated that she does not know if it is possible for Respondent to designate certain vehicles for operation solely in Philadelphia as opposed to operation outside of Philadelphia. N.T. 25, In 4-10.

Officer Culver testified that she issued a violation that states that Respondent's vehicle was not equipped with a meter, but she acknowledged that the taxicab in question was equipped with a meter. N.T. 25, In 12-17.

She stated that the meter that was installed in the taxicab did not have Rate 2. N.T. 25, ln 18-20. She stated that she determines what rate is on a meter by pressing a button that switches from one rate to another and the taxicab in question did not have a second rate on it, which she states would be the Commission-approved rate. N.T. 25, ln 21-N.T. 26, ln 1.

When asked whether the Commission had the authority or jurisdiction to inspect vehicles under the PPA's authority, Officer Culver stated that all of Respondent's vehicles she inspected were under the Commission's authority and that she knew this because Respondent has dual authority. N.T. 26, ln 2-14. She stated that she had no training from the Commission with regard to dual authority. N.T. 26, ln 15-21. She stated that she knew Respondent is subject to regulation by both the Commission and the Authority because Respondent continues to pay its Commission assessment. N.T. 26, ln 22-N.T. 27, ln 2.

She did not know whether there were any other taxicabs in the Commonwealth that are regulated by both the Commission and the Authority or whether the Authority inspects any taxicabs other non-medallion taxicabs. N.T. 27, ln 3-15. She did not remember whether she received any special instruction regarding changes that were affected by Act 94 with regard to non-medallion taxicabs. N.T. 27, ln 15-N.T. 28, ln 12.

She testified that the seals on the meters are placed there by Germantown Cab and that PUC officers are not involved in any way with the sealing of meters. N.T. 28, ln 17-22. She said the purpose of the seal is to prevent tampering. N.T. 28, ln 23-25. She testified that the meter is sealed when it is calibrated. N.T. 29, ln 1-3. She testified that

she does not rely on the seal as an indication that the meter has been calibrated correctly. N.T. 29, ln 16-25.

She testified that Respondent corrected the violations in two of the three vehicles at the time of inspection and that a third was re-inspected at a later date; although she did not re-inspect it. N.T. 31, ln 1-N.T 32, ln 12.

On redirect, Officer Culver testified that she did not inspect any taxicabs during this annual inspection which did not have a PUC number on the side. N.T. 33, ln 8-11.

The Commission's second witness was Officer Charles Myers.

Officer Charles Myers testified that he is an enforcement officer for the PUC and that he is in his 14<sup>th</sup> year in that position. N.T. 34, ln 22-25. He testified that prior to working for the PUC he was a Philadelphia Police detective for almost 30 years. N.T. 35, ln 1-6. He testified that he is a certified inspector for motor carriers, including tractor trailers, buses, limos, and taxis, that he is also a state certified vehicle inspector, and that he also undergoes ongoing training. N.T. 35, ln 7-19. He testified that his duties in his current position consist of stopping and conducting inspections on motor carrier vehicles, including taxis. N.T. 35, ln 20-24. Officer Myers was tendered as an expert in the field of motor carrier inspection. N.T. 35, ln 25 – N.T. 36, ln 4.

Officer Myers identified an inspection report for G-43, one of Respondent's vehicles. N.T. 36. The vehicle has a PUC No. on its side. N.T. 37, ln 2-4. His inspection of the vehicle revealed an unsecured battery. N.T. 37, ln 6-11.

His inspection of Respondent's vehicle No. G-74, which had a PUC number on its side revealed a slow meter. N.T. 37, ln 13-N.T. 38, ln 5. He testified that he tested the meters during this inspection on a marked out, one mile course on Belfield Avenue,

which he has used for at least three or four years. N.T. 33, ln 8-11. He testified that Germantown had a meter repair man on site during this inspection and any meters the PUC said were not calibrated correctly were immediately repaired without objection. N.T. 38, ln 21-25.

In response to a question by the ALJ, Officer Myers testified that the meter for G-74 should have been \$4.80 at the mile mark on the test course, but that it was \$3.00 instead. N.T. 39, ln 3-9.

On cross-examination Officer Myers testified that the marked out, one mile course on Belfield Avenue was measured by Officer Ralph Kane. N.T. 39, ln 16-22. He testified that he does not know if the course was measured accurately because he did not measure it. N.T. 39, ln 25 – N.T. 40, ln 3. He said that hills and curves on the course do not affect the meter readings and that the course did have turns in it. N.T. 70, ln 4-16. He stated that Respondent's meters have waiting time programmed into them but that the waiting time feature was deactivated during the test. N.T. 40, ln 17-20.

Officer Myers stated that he never had anyone object to the measurement of a test course. N.T. 41, ln 3-6. He could not explain why Respondent's meter was running so slow. N.T. 41, ln 7-14. He testified that Germantown's meters were sealed, but that he does not know who sealed them. N.T. 41, ln 15-18. He stated that he did not know whether the Authority seals meters. N.T. 41, ln 19-21.

He testified that, under PUC regulation, the carrier is responsible for calibrating and sealing the meters, and that this is to prevent tampering by the driver or anyone else. N.T. 41, ln 24 – N.T. 42, ln 5. He testified that he does not believe the PUC certifies calibrators, the people who calibrate meters. N.T. 42, ln 6-9. He testified that when he

sees a seal on a meter, that does not mean anything to him in terms of whether the meter is accurate. N.T. 42, ln 10-13.

He stated that he does not know what is done to make a meter function properly and he just relies on the repairman to tell him that it has been corrected. N.T. 42, ln 14-18. He acknowledged that the transmission in the vehicle can affect the meters performance. N.T. 42, ln 19-25.

He stated that the margin of error on meter performance is 100 feet on either side of the mile marker. N.T. 43, ln 1-11. He stated that he did not know if Respondent's manager ran the vehicles that failed inspection over the mile course to determine the accuracy of the meter test. N.T. 43, ln 12-17.

He testified that the rate that registers \$4.80 at the mile marker is the Commission approved rate for Respondent. N.T. 43, ln 18-23. He said he did not know Respondent's Authority-approved rate. N.T. 43, ln 24-25. He stated that the Commission-approved rate is Rate 2 on Respondent's meters. N.T. 44, ln 1-3. He stated that the meters two rate settings and that the driver controls which rate is in effect during a trip. N.T. 44, ln 4-9. He stated that he did not know when Rate 1 and Rate 2 apply while the taxicab is in operation. N.T. 44, ln 10-15. He stated that he tested Rate 2 on Respondent's meter. N.T. 44, ln 13-14. Officer Myers said that it would make a difference if the rates were set up in reverse order. N.T. 44, ln 18-21. He did not know who sets up Respondent's meters in this regard. N.T. 44, ln 24.

Officer Myers testified that Respondent's representative was present when the meter tests were conducted. N.T. 45, ln 1-5.

On redirect, Officer Myers stated that he did not need to be an expert in Commission rates. N.T. 45, In 17-21. He explained that it is the certificate holder's responsibility to calibrate meters and that they are permitted to set their own rates. N.T. 46, In 1-4. He stated that it would be the carrier's responsibility to calibrate the meters with the appropriate rates as Rate 1 and Rate 2. N.T. 46, In 1-9.

On re-cross examination, Officer Myers stated that he was not aware of any regulation that established Rate 1 as the Authority-approved rate and Rate 2 as the Commission-approved rate. N.T. 46.

As to the markings on the side of the vehicle, Officer was not aware of any markings relating to the Authority. N.T. 47, In 1-3. He stated it would be a violation of Commission regulations if the vehicle did not have its PUC number on the side. N.T. 47, In 3-5.

The Commission then called Officer Ralph Kane as their third witness.

Officer Ralph Kane testified that he is an enforcement officer for the PUC, that he had this position for 12 years, and that prior to that he was a Philadelphia Police sergeant for 30 years. N.T. 48, In 11-22. He testified that the PUC regulates interstate commerce of any vehicle over 10,000 gross vehicle weight, motor carriers, trucks, tankers, hazmat vehicles, to include cargo tanks, limos, buses, and taxicabs, mainly county cabs. N.T. 49, In 6-10. He testified that he is certified as a new entrance specialist with the PUC, and that he undergoes periodic computer training and annual training at the conference once a year. N.T. 49, In 11-18. He testified that his duties at the PUC include regulating inter and intrastate commerce and regulating the county's cabs, and that they also inspect motor coaches, buses, cabs, limousines, and tractor trailers. N.T. 49, In 19-24.

Officer Kane testified that his inspection of G-4 revealed two violations: No PUC markings and a fast meter. N.T. 50, ln 11-22. The meter registered \$5.10, instead of \$4.80 at the one mile mark. N.T. 50, ln 22. He described the procedure for testing meters on the test course. N.T. 50, ln 23-N.T. 51, ln 16. He said the PUC has used the course for about 5 years. N.T. 51, ln 19-21. He said the PUC has tested approximately 100 taxicabs on this course over that time, without any issues. N.T. 51, ln 24-N.T. 52, ln 4.

Officer Myers testified that his inspection of G-6 revealed a fast meter registered \$5.10, instead of \$4.80. N.T. 52, ln 17-22. He said the driver is responsible for setting the correct rate during the test. N.T. 53, ln 1.

Officer Myers testified that his inspection of G-19 revealed a fast meter, where the meter registered \$5.10, instead of \$4.80. N.T. 53, ln 14-17. He stated that the violations were corrected at the time of inspection. N.T. 53, ln 21-25. The vehicles passed the test on re-inspection. N.T. 54, ln 1-2.

Officer Myers stated that Respondent objected that it was impossible for the number of meters to be out of calibration. N.T. 54, ln 5-17.

Officer Myers testified that his inspection of G-17 revealed a fast meter, where the meter registered \$5.10, instead of \$4.80 and that it was corrected at the time of inspection. N.T. 55, ln 2-6.

On cross-examination, Officer Myers admitted that Respondent's manager rode with him during a meter test after it was discovered that the meter was running fast. N.T. 56, ln 1-7. He stated that they detected that the meter was "tripping" at certain times and that Respondent agreed to fix it. N.T. 56, ln 8-13. He also stated that, after running two

consecutive tests, some meters passed on the second run after failing the first run. N.T. 56, 14-22.

With regard to the 100 foot tolerance on the meter test, Officer Myers acknowledged that Respondent's tariff provides for a fare of \$0.30 per 1/7 of a mile, but he did not know how many feet were in 1/7 of a mile. N.T. 57, ln 5-7. He stated that a perfectly calibrated meter would click on \$4.80 at the mile mark. N.T. 57, ln 8-11. He stated that Respondent's meter clicked to the next increment more than 100 feet before the mile mark. N.T. 57, ln 23- N.T. 58, ln 1.

Officer Myers testified that Respondent has made its meter calibration technician on site during Commission inspections over the last couple of years so that any necessary corrections can be made on the spot. N.T. 58, ln 11-17.

Officer Myers stated that the seals on Respondent's meters were mostly lead, but that some were marked with the Authority's letters. N.T. 59, ln 5-16. He did not know whether the Authority uses lead seals. N.T. 59, ln 17-19. He did not know what the Authority seal signified. N.T. 59, ln 20-24. He stated that the Commission does not seal meters. N.T. 59, ln 24, N.T. He did not know whether the Authority seals meters. N.T. 60, ln 2-3. He did not remember if the Authority seal had a date on it. N.T. 60, ln 4-7. He also did not know if the Authority calibrates meters. N.T. 60, ln 8-10. He also did not know whether the Authority inspects meters. N.T. 60, ln 11-12.

Officer Myers testified that Respondent's Commission tariff has only one rate on it. N.T. 60, ln 13-15. But all of the taxicabs he inspected had two rates. N.T. 60, ln 16-18. He testified that a passenger can go to the city from the suburbs and have one rate, and then have another rate on the return trip. N.T. 61, ln 11-14. He testified that he does

not know if the current rules regarding which rates apply to which trips for partial rights cabs are part of any regulation, but that he know what he does about the rates from training he has received from the PUC. N.T. 62, ln 5-9.

He testified that he does not know whether the PPA and the PUC have entered into any agreements concerning jurisdiction, but he wishes that they would. N.T. 62, ln 10-14. He testified that the structure of rates and territories is confusing. N.T. 62, ln 16-20.

He testified that he himself measured the marked out, one mile course on Belfield Avenue. N.T. 62, ln 25 – N.T. 63, ln 4. He testified that to measure the course he used a meter that was installed into his vehicle that calibrates a distance meter, a mile meter that he plugs in and puts on the dashboard, and that he also has a wheel for accident reconstruction, and he used this wheel to measure the 100 foot markers on either side of the mile mark. N.T. 63, ln 5-17. He testified that the meter is tied into his vehicle, that it is plugged in and tied in with the transmission. N.T. 63, ln 12-24.

He testified that variations in meter readings can be caused by something mechanical, such as a transmission. N.T. 64, ln 9-19. He said that the meter can be affected if the transmission slips. N.T. 64, ln 17-22. He testified that he has no explanation as to why these meters were not registering properly. N.T. 64, ln 23-25.

Officer Myers testified that all of Respondent's vehicles are allowed to provide service in the Philadelphia part of its operating territory. N.T. 65, ln 13-15. He testified that every vehicle in Germantown's fleet is subject to inspection by the PUC. N.T. 65, ln 21-25. He testified that he not only inspects Germantown's vehicles at the annual inspection, but that he also does field and spot inspections. N.T. 66, ln 1-4. He testified

that PUC officers conduct random field inspections on vehicles within the City of Philadelphia. N.T. 66, ln 24 – N.T. 67, ln 2. Officer Kane was shown a driver/vehicle compliance report that indicates that a random inspection was performed by Officer Culver for a point to point trip within the City of Philadelphia. N.T. 67, ln 20 – N.T. 69, ln 1.

On redirect examination, Officer Kane, testified that the marked out, one mile course on Belfield Avenue is used for Germantown Cab exclusively. N.T. 79, ln 13-14.

On re-cross examination Officer Kane testified that he measured this course with his own meter. N.T. 81, ln 10-11. He testified that the meter is self-calibrating, and that he does not have to have this meter inspected for accuracy. N.T. 81, ln 12-22. When asked whether he is aware that the PPA allows Germantown to designate some of their vehicles instead of requiring them to designate all of their vehicles for operation within the Philadelphia territory he testified that he was not aware of that. N.T. 81, ln 23 – N.T. 82, ln 4.

The Commission then called Officer Alex Zincenko as its fourth witness.

Officer Alex Zincenko testified that he is a supervisor with the PUC and that he has been a supervisor for three years, he has been with the PUC for fifteen years as an enforcement officer, and that prior to that he was a sergeant with the Philadelphia Police Department for 30 years. N.T. 83, ln 6-23. He testified that he is certified in truck training, hazardous material inspections, tanker inspections, small passenger vehicle inspections. N.T. 84, ln 3-7. He testified that the PUC has monthly staff meetings with continuous updates of regulations and enforcement procedures. N.T. 84, ln 8-12. He testified that the PUC has a yearly conference where they have a weekly training session.

He testified that his duties as a PUC enforcement officer supervisor include checking paperwork and assigning jobs to enforcement officers. N.T. 84, ln 12-18. He testified that he participates in the inspections himself. N.T. 84, ln 19-23.

Germantown then conducted their cross examination of officer Alex Zincenko.

He testified that he has dealt with Germantown Cab for years, and that he has never had a problem with them in terms of their cooperation during field inspections and their correcting of violations. N.T. 96, ln 1-11. He testified that he permits the certificate holders to participate in the inspections with him, as long as they do not interfere. N.T. 96, ln 19-24.

He testified that, during the test, when he believes that the problems he encountered with Germantown's meters were calibration problems, and not improper or phony rates. N.T. 103, ln 1-9. He testified that there was no indication or evidence that there was any fraudulent activity done here, that it was just an equipment problem. N.T. 103, ln 10-13. He testified that, on the particular report in front of him, that the meter was sealed, so he assumes that the driver did not tamper with the meter. N.T. 103, ln 13-16.

He testified that designating rate 1 as the PPA rate and rate 2 as the PUC rate is by tradition, not regulation. N.T. 104, ln 16-18.

He testified that in the annual inspection the person assigned approaches the carrier, they speak to the owner or an officer of the company, and they instruct the officer of the company as to various procedures that are going to be taken during our inspection. N.T. 104, ln 21 – N.T. 105, ln 3. He testified that during the annual inspection the assigned officer then looks at various paperwork, looks at the drivers' files, looks at the

vehicles' files, and various other similar documents. N.T. 105, ln 4-7. He testified that they would then discuss the inspection procedure that they would take with the carrier. N.T. 105, ln 7-9. He testified that the carrier usually tells them what button to press for PUC runs. N.T. 105, ln 10-13. He testified that when they get into a vehicle they tell the driver to take the wait time off the meter and to press the correct button for the PUC run, which is always rate 2. N.T. 105, ln 14-18.

He testified that Mr. Gabbay was present at the inspection in question, and that although he expressed surprise that there were so many meters coming up wrong, he did not argue that there was nothing wrong with the meter, he just had it repaired. N.T. 105, ln 19 – N.T. 106, ln 9. He testified that Mr. Gabbay rode in the back of the several of the taxis that he inspected. N.T. 106, ln 14-18.

He testified that one vehicle in Germantown's fleet that had a violation for tires, employing a PennDot standard. N.T. 108, ln 18 – N.T. 109, ln 1. He testified that this was the only violation for tires during this inspection. N.T. 109, ln 5-10.

He testified that when a vehicle has a violation it is placed out of service, and that vehicle cannot pick up passengers until the violations are corrected. N.T. 110, ln 5-9. He testified that within 30 days an officer has to do a certification inspection on any vehicle that he places out of service. N.T. 110, ln 10-12. He testified that an officer typically calls a carrier up, tells him a vehicle was placed out of service, and that he will be back in two weeks to re-inspect the vehicle. N.T. 110, ln 12-16. He testified that the vehicle can go back into service as soon as the violation is corrected, but it still has to go through an inspection by PUC officers to lift the out of service. N.T. 110, ln 17-21. He testified that it is not reasonable to have the vehicle stay out of service for 30 days. N.T. 110, ln

21-23. He testified that Germantown has complied with the requirements in terms of getting defects corrected. N.T. 110, ln 24 – N.T. 111, ln 2.

He testified that the PUC regulations require the decals to be placed on the door windows, but that the PUC is somewhat reasonable with those regulations. N.T. 111, ln 3-9. He testified that many taxicabs have trouble with the stickers being on the window because when the window comes down the stickers get stuck, they get ripped off, or whatever the cause may be. N.T. 111, ln 10-13. He testified that the general rule, which may not be written down anywhere as per regulation, is that the officers are to give a little leeway on the requirement of the decal being on the door window. N.T. 111, ln 14-17. He testified that if one of these stickers was on the back of the front seat where the passengers could see the information then he would not write the vehicle up. N.T. 111, ln 18-21. He testified that the purpose of the decal is so if the passenger has any problem or complaint they can call the PUC and make the complaint. N.T. 111, ln 22-25.

He testified that he is aware that these vehicles are also used in service that was regulated by the PPA. N.T. 112, ln 1-9. He testified that the decal does not explain to the customer under which circumstances it would be appropriate to call the PUC based on the origin and destination of the trip. N.T. 112, ln 10-14. He testified that the decal is a small piece of paper that does not contain information about Germantown's tariff. N.T. 112, ln 15-18. He testified that the schedule of rates must also be posted in the taxicab. N.T. 112, ln 23 – N.T. 113, ln 1. He testified that the PUC does not have any problem with other decals being affixed to the passenger area of the car as long as the driver's vision is not somehow impaired. N.T. 113, ln 8-13. He testified that the PUC does not require a partition in the vehicle, so partitions are generally the PPA's responsibility.

N.T. 113, ln 8-13. He testified that he imagines that some of Germantown's vehicles have partitions and some do not, but he does not even look for the partition because it is not something the PUC enforces. N.T. 114, ln 1-8.

He testified that, since both PUC and PPA stickers are visible to customers within the passenger compartments of taxicabs, his office has received telephone calls from people making complaints which they have had to direct to the PPA. N.T. 114, ln 19-23. He testified that does not doubt that the PUC has received complaints about Germantown Cab that they have had to refer to the PPA. N.T. 115, ln 7-11.

He testified that the PUC does basically the same inspection of Germantown Cab's vehicles now as they did before Act 94. N.T. 116, ln 12-24. He testified that he believes these vehicles get inspected by the PPA on a periodic basis, but he is not concerned about PPA regulations and that he does not recall nor believe that he saw PPA seals on the meters he inspected. N.T. 117, ln 3-17. He testified that the seal basically tells us that the meter is not able to be opened and tampered with inside, although nothing is foolproof because the seal is basically held on by a little wire which anybody could cut and tamper with the meter. N.T. 117, ln 20 – N.T. 118, ln 1. He testified that during the time of inspection, the regulations state that the meter has to be sealed. N.T. 118, ln 1-2. He testified that during this inspection all of the meters were sealed. N.T. 118, ln 3-6. He testified that if a meter that has been calibrated and sealed is not registering the proper tariff then it is likely because the meter either was not calibrated correctly, has been tampered with and had another seal put on it, or because of a mechanical issue. N.T. 118, ln 15 – N.T. 119, ln 11.

He testified that he does not believe that there is a certification process for people who calibrate meters. N.T. 119, ln 22-24. He testified that the PUC does not certify meter calibrators. N.T. 120, ln 1-3.

The Commission then conducted their redirect examination of Officer Zinczenko.

He testified that, since the implementation of Act 94, the PUC's regulations regarding annual inspections, as well as his duties, have not changed. He testified that nobody at the PUC, none of his supervisors have told him that he should be doing the inspections in a different way. N.T. 120, ln 17-24.

Germantown then conducted their recross-examination of Officer Zinczenko.

He testified that he is not concerned about the technical reasons why a meter may be running fast, and that he basically cares that passengers are charged the correct amounts. N.T. 126, ln 15-20. He testified that if somebody is trying to cheat the public and has tampered with a meter it would not be more serious in his eyes than if they change the tires and it threw the vehicle off the calibration. N.T. 127, ln 1-9. He testified that the system works better when everyone works in good faith to try to comply with standards, and that he enforces them to benefit the public. N.T. 128, ln 10-14. He testified that Germantown Cab has been cooperative in allowing the PUC to inspect their vehicles. N.T. 129, ln 3-9.

Germantown then called its first witness, Rostislav Kaminsky.

Rostislav Kaminsky testified that he fixes taxi meters. N.T. 131, ln 14-17. He testified that he has been fixing taxi meters since 1990. N.T. 131, ln 18-20. He testified that when he was working on medallion taxicabs, he would fix the meters for about 75% of all of Philadelphia's taxicabs, on a yearly basis. N.T. 132, ln 1-4. He testified that he

has training from previous meter men, training from a factory, and that he is kept informed of any updates. N.T. 132, ln 9-11. He testified that he is currently not allowed to touch the meters in medallion taxicabs because the PPA handles all those meters themselves. N.T. 132, ln 16-18. He testified that he fixes meters for Germantown Cab Company. N.T. 132, ln 19-21. He testified that he is the go-to-guy in Philadelphia for fixing and calibrating meters. N.T. 132, ln 24 - N.T. 133, ln 1. He testified that he is known as Ros, the meter man. N.T. 133, ln 7. He testified that he hooks the meter up to the car computer, the one which gives the data to the odometer, and from there it goes to the taxicab. N.T. 133, ln 9-14. He testified that in order to program a meter to reflect the tariff for the individual carrier he collects information from the owner of the vehicle, then he calculates the particular information in the software in the side of the meter. N.T. 133, ln 21 – N.T. 134, ln 2. In order to program the mileage rate, he testified that he takes the car for a road test, driving exactly one mile; based on this road test, the meter indicates how many revolutions it does to reach that particular mile, and that information is entered into the meter. N.T. 134, ln 24 – N.T. 135, ln 3. He testified that these calculations vary from vehicle to vehicle, and that every meter has to be calibrated for each car, even cars of the same model and year. N.T. 136, ln 4-10. He testified that the number of revolutions per mile recorded by the meter can be affected by a number of things, including the transmission, the rear of the vehicle, and the size of the tires. N.T. 136, ln 11-16. He testified that if the tire size is changed or the transmission is repaired then the meter must be recalibrated as well. N.T. 136, ln 17-20. He testified that he regularly calibrates the meters in Germantown's taxicabs throughout the year. N.T. 136, ln 21-24. He testified that he is under contract with Germantown cab, and that Germantown Cab

sends its vehicles to his garage to be recalibrated. N.T. 136, ln 25 – N.T. 137, ln 13. He testified that he does work on the meters for Germantown Cab on a weekly basis, and that he has worked on all of their vehicles. N.T. 137, ln 16-19.

He testified that he calibrated the meters in the vehicles which Germantown sent to the PPA, but that he lacks knowledge as to what the PPA does to the meters. N.T. 137, ln 23 - N.T. 138, ln 9. He testified that when Germantown is preparing for a PUC inspection, he comes to Germantown's facility to make sure everything is correct. N.T. 138, ln 21-24. He testified that if an officer finds a defect in a meter and the way that it's calibrated then he fixes it right away. N.T. 138, ln 25 – N.T. 139, ln 6. He testified that he was surprised when some of the meters failed to pass inspection, and that he recalibrated them right away. N.T. 140, ln 12-14. He testified that there have been situations where a vehicle failed inspection when conducted by the PUC officer, yet when he reran the test immediately afterwards the vehicle passed. N.T. 140, ln 22 – N.T. 141, ln 7.

He testified that he programs the meters for Germantown with two rates, one rate for the City of Philadelphia, and the other rate for operating outside of Philadelphia. N.T. 141, ln 25 – N.T. 142, ln 10. He testified that Rate 1 is the PPA rate and Rate 2 is the PUC rate. N.T. 143, ln 9-12. He testified that only Germantown and other partial rights cabs have two rates in their meters, and that other cabs only have one rate. N.T. 144, ln 5-13. He also testified that he has nothing to do with the inspection, calibration, or enforcement of PPA rates, only PUC rates. N.T. 144, ln 14-17.

Germantown then called their second witness, Joseph Gabbay.

Joseph Gabbay testified that, as general manager, he helps oversee the day-to-day operations of the company, including insuring compliance with the rules and regulations of the various agencies that regulate the industry. N.T. 146, ln 22 – N.T. 147, ln 2. He testified that the PUC has always regulated his company, and that the PPA claims to have authority to regulate his company as well. N.T. 147, ln 3-8. He testified that the PUC has vehicle standards which he has to comply with, and that the PPA vehicle standards sometimes conflict with the PUC standards. N.T. 147, ln 9-17. He testified that both agencies attempt to enforce those standards on his vehicles. N.T. 147, ln 18-20. He testified that he has a PUC tariff on file, but has never seen a PPA tariff; instead, he testified, the PPA just passed some regulations that say he has to charge the same rate as the medallion cab, or in the alternative, he can cap his certificate. N.T. 147, ln 21 – N.T. 148, ln 5. He testified that the regulations that the PPA adopted in 2005 until present say that if he wants to charge a different rate than the uniform rate that medallion cabs must charge, he has that option, but in turn he must cap his certificate. N.T. 148, ln 6-12. He testified that Germantown Cab is an open-ended certificate, operating under one certificate, and that it has been that way since the existence of the license. N.T. 148, ln 13-15.

He testified that his company purchased Germantown Cab from someone else. N.T. 148, ln 17-21. He testified that there was an investigation called IV-171, and the issued medallions or certificates to each of these companies to replace their single certificate for all their vehicles. N.T. 148, ln 22 – N.T. 149, ln 1. He testified that there is testimony that they will ask us to stay in business in Philadelphia because of the inadequate service in that neighborhood. N.T. 149, ln 2-5.

He testified that the original application for authority was filed with the Public Utility Commission. N.T. 149, ln 6-9. He testified that the company that his company purchased Germantown from applied for a territory. N.T. 149, ln 10-15. He testified that the application was for caller advance service. N.T. 149, ln 16-17.

He testified that his company services Montgomery County, Norristown, Conshohocken, Plymouth Meeting, parts of Blue Bell, Woodhaven, (150) as well as a small portion of Philadelphia in the northwest section of the city, including Germantown, Chestnut Hill, and Roxborough. N.T. 149, ln 18 – N.T. 150, ln 4. He testified that his company has been operating since the 1980's, although the cab company itself, before it was purchased by Mr. Gabbay's family, he testified, goes back before the 1950's, possibly even into the 1920's. N.T. 150, ln 5-10.

He testified that the cab company, even before it was purchased by his family, had always been regulated by the PUC. N.T. 150, ln 11-13. He testified that with the enactment of Act 94, there was a dramatic change for non-medallion cabs in the City of Philadelphia. N.T. 150, ln 14-19. He testified that none of his vehicles have medallions. N.T. 150, ln 22. He testified that he has an open-ended license and that he can operate as many vehicles as he needs to. N.T. 151, ln 1-4. He testified that whether he adds or subtracts vehicles from his fleet depends on a number of factors. N.T. 151, ln 5-13. He testified that on the PUC side it is based on need. N.T. 151, ln 14. He testified that in the event of a big rush call, like a strike for example, he would need more vehicles. N.T. 151, ln 15-17. He testified that in the summer he needs less vehicles and many of them get parked for the summer months. N.T. 151, ln 18-24. He testified that the conflicting

regulations in the PPA and the PUC causes him to have less vehicles on the road. N.T. 151, ln 25 – N.T. 152, ln 12.

He testified that he operates over 120 vehicles, but that number fluctuates. N.T. 152, ln 13-15. He testified that on the day the PUC inspected his vehicles, he was probably only operating 90 vehicles. N.T. 152, ln 25 – N.T. 153, ln 2.

He testified that every one of the vehicles is subject to PUC regulations and enforcement. N.T. 153, ln 7-10. He testified that the PPA claims Germantown can self-designate vehicles, meaning they can choose which vehicles will operate in the Philadelphia portion and then the PPA charges an annual assessment per vehicle for the vehicles he operates within the City of Philadelphia. N.T. 153, ln 13-20. He testified that it is a nearly impossible double standard because they also claim there is a jurisdictional agreement, and therefore, the cars that he does not designate to operate in Philadelphia would fall into what they call rate 2. N.T. 153, ln 22 – N.T. 154, ln 1.

#### MSH

“They said they have nothing to do with the PPA rate. They have jurisdiction and authority to regulate Germantown Taxicab, and they’re allowing Germantown Taxicab to operate with a rate that they don’t get involved with. They don’t inspect the calibration on the (156) meters for that rate. They don’t have to enforce it if they’re charging a rate that’s not fair. And on the flip side of it, what they’re saying is that – what he’s saying is that the Parking Authority allows him to operate vehicles that they don’t regulate or inspect. That’s absurd. There is no carrier under the PPA’s jurisdiction except for this carrier and the other four that operate vehicles. And every vehicle authority of a regulatory agency must be inspected and the rates have to be regulated. We have one

agency saying, well, we regulate some of the rates. And we have another agency saying we inspect some of the vehicles. That's the absurdity of the situation."

(157) "The law is clear I can raise and the court can raise jurisdiction. And the Commission when it considers this issue, even the Commonwealth Court can all raise jurisdiction as an issue at any point in the proceedings."

(161) "what we're saying here is that we've got an admission for the PUC enforcement officers that they're allowing a taxicab to operate with a rate that they don't regulate. They claim jurisdictional authority to regulate and then say, well, there're some rates we do not regulate. We don't regulate shields or protective barriers. This is the operation of a taxicab that a regulatory body is only partially regulating in all its activities. And it's our contention that that's not what the General Assembly intended here. The General Assembly intended one entity to regulate them. I don't know which one it is, necessarily. I have legal argument that I have been asserting before the Parking Authority. But this is an important issue. And this is a critical issue that is costing my clients millions of dollars in compliance costs. And if it is not resolved, they will go out of business. Because unlike every other entity in the state, they have to comply with two conflicting sets of regulations which are in some ways impossible to comply with and expensive to comply (162) with in the alternative. You have two different standards. Whatever the highest standard is for whatever agency, and it varies, they have to comply with the highest one. So in their county operations, they have to comply with higher standards than all other PUC carriers. And their city operations, they have to comply with higher standards than the medallion cabs. So it's not an academic issue. It's a real life business survival issue. So that's why we're trying to establish a record here. And

that's why we're trying to show – and it's not a reflection on the officers; it's not a reflection on the Commission. But there is an absurdity here, that unless either this court, the Commission, or the Commonwealth Court or Supreme Court, whoever ultimately decides the issue sees that when we say that, you know, a tentative statutory construction that the General Assembly didn't intend this is absurd. Well, it's not absurd on its face because obviously, either the General Assembly didn't think a lot of these issues through. But certainly, the (163) PUC and the PPA, when they entered into that jurisdictional period didn't think this thing through. And probably entered into an agreement that's contrary to the intent of the legislature in enacting Act 94. And that's really what we're trying to do and establish – I'm certainly willing to do it on the basis of a motion before we get to the merits, but however you wish to proceed, but in fairness, I did attempt to work that out with counsel before the hearing.

(165) I certainly am making that motion (to terminate) now. And I think as a matter of good legal practice, I have to make a motion to dismiss this action on the basis that the Public Utility Commission doesn't have jurisdiction to regulate the operations of Germantown taxicab. And that certainly – I don't know that if they were attempting to regulate the cab company in Camden that I would have had to put them on notice beforehand that I was going to contest jurisdiction.

(167) Mr. Henry submitted a copy of Jurisdictional Agreement Pursuant to Act 94 of 2004 at docket number M-00051868 to the court. (168) Mr. Henry drew the court's attention to paragraph two, entitled Partial Authority of Taxicabs, and it provides: "Currently there are carriers authorized to provide taxicab service to designate areas within Philadelphia on a nobbily wide basis. Section 22 of Act 94 provides the PPA has

jurisdiction over these carriers operation within Philadelphia. These carriers also hold authority from the Commission to serve designated areas outside Philadelphia. The Commission and the PPA have agreed that (169) service provided under dual authority to/from points within the PPA authorized area (in Philadelphia) to/from points within the Commission authorized area (outside of Philadelphia) will be regulated by the PPA. So what in essence that's saying is that point to point within Philadelphia, regulated by the PPA. From territory within Philadelphia to any other point outside of Philadelphia, regulated by the PPA. Any point within the authorized territory to Philadelphia regulated by the PPA. And last, any point in the territory outside of Philadelphia to any point in the Commonwealth other than Philadelphia PPA regulated by the PUC. So there's four options there. Only one type of trip is regulated by the PUC. It's not carriers that are regulated; it's service, which is absurd.

(170) "It's not what we want; it's what the General Assembly says the law is and how the courts interpret that. We're asking the courts in various proceedings that have not ripened into decisions that the Parking Authority does not have regulations over Germantown Taxicab. There are two possibilities there. Well, there's three possibilities. The court can decide that the PPA does have jurisdiction. Or the court can decide that both of them have jurisdiction. If they decide that the PUC has jurisdiction – well, regardless of the outcome, until that decision is made, we have to preserve our rights in contesting the regulation of the PUC on the basis, on the same basis that we're contesting the regulation of the PPA. They're not inconsistent necessarily until the court rules on them. When a court rules on them, then – if they say, no, it's exclusively within the PPA, if the court says that, then we failed to raise a defense here that was available to us,

although it hadn't been decided by a court. (171). So, just because there is another proceeding pending and there may be a decision there, if that decision determines the jurisdiction of the PPA, it's too late for us to raise it after the court decides it because this is today. We have to raise that defense today. And it's available to us today. And it's available until the Commonwealth Court or the Supreme Court says otherwise. So we don't necessarily object to the jurisdiction or it may be our desire to be regulated by the PUC, but good lawyering, I think, requires me to raise that defense at this part of the proceeding."

Referring to the Commonwealth Court argument the prior week, Mr. Henry "the docket number is 84MD – Middle District – 2011. And the case is Sawink versus Philadelphia Parking Authority. There are other parties. Germantown is also a party in that case. And the other case that may be relevant to the proceedings is Germantown Cab Company versus (172) Philadelphia Parking Authority. That's 993A-2<sup>nd</sup>-9333-2010, Commonwealth Court, 2010." "There's also a proceeding before Judge Nugyen involving paragraph one of the jurisdictional agreement. And that case is Sawink, Inc. versus Oged, Inc. It's kind of important that the Commission and I think counsel be aware of that as well. Because many of the same issues, although it's medallions versus – it's whether medallions retain authority outside of Philadelphia that's regulated by the PUC. So it's kind of related."

#### Back to Joseph Gabbay

Mr. Gabbay further testified that prior to Act 94, his company only had one rate for their entire operation; their tariff was one tariff. N.T. 174, ln 11-13. He testified that when the PPA took over, they informed his company that they would no longer be

allowed to maintain the same rate which they had prior to Act 94, that they insisted he raise his rates to meet the uniform rate of the medallion cabs. N.T. 174, ln 16-20.

He testified that, prior to Act 94, he was not required to comply with the same requirements as medallion taxicabs for his operations in Philadelphia, but that he was required to follow under Chapter 29. N.T. 174, ln 21 – N.T. 175, ln 1. He testified that the medallion requirements were under chapter 30 and that he was not required to follow them. N.T. 175, ln 1-7.

He testified that the PPA forced his company to raise their rates to the standards of medallion taxicabs, and that if he did not raise his rates he would be forced to cap his certificate, which would be detrimental to his company, so they had no option but to raise their rates. N.T. 175, ln 8-20. He testified that at the time they received letters from the PPA ordering them to comply with these standards, otherwise they would be considered illegal operators and their vehicles would be impounded. N.T. 176, ln 1-8.

He testified that he complied with the PPA's demands, requiring him to raise the fares he charged. N.T. 176, ln 9-12. He testified that they had to have two rates, and that he does not remember how it was that rate 1 would be PPA and rate 2 would be PUC. N.T. 177, ln 1-3.

He testified that the PPA also does annual inspections of the vehicles. N.T. 177, ln 7-8. He testified that prior to Act 94, the medallion cabs were required to go to the Commission to have inspections. N.T. 177, ln 9-11. (Sorry Mike, but I can only guess as to what exactly Joey is saying here – there are too many pronouns. I'll leave these next three sentences to you, quoted verbatim) “And when they took over the medallion program of the PPA, the medallion cabs are still required to do down there, and they

forced us to come down to their facility as well, which is something we were not required to do under the Medallion Act. And that's how they enforced it. They checked our meters and then they put the seals on our meters, PPA seals that verify that they inspected our vehicles and we conform with their regulations." N.T. 177, ln 11-21.

Regarding the practicality of a taxicab having two rates, he testified that it is not only an impossible standard to meet, but that it can cause a tremendous amount of conflict. N.T. 177, ln 22-25. He testified that, to begin with, it creates conflict between the driver and the customer. N.T. 178, ln 1.

He testified that a source of this conflict between the customer and driver is that under Germantown's PUC tariff, the meter registers at 1/7<sup>th</sup> of a click, but the PPA's rates register at 1/10<sup>th</sup> of a click. N.T. 178, ln 2-6. He testified that, because of this discrepancy, when a customer gets in the vehicle, whether or not they know how much a mile would be, they see the meter clicking every 1/10<sup>th</sup> of a click, and they think it is running fast, which causes them to have arguments with the driver. N.T. 178, ln 7-11.

He testified that another source of conflict is the fact that the rates change from which direction you're going. N.T. 178, ln 14-15. He testified that if a customer travels from the Norristown Transfer Center to their home in Conshohocken, for example, they pay \$2.10 a mile, but the same day they can travel from the Norristown Transfer Center and it would be \$2.30 a mile. N.T. 178, 14-21.

He testified that it causes another problem for the drivers because if a customer changes their mind halfway through a trip then the driver has to turn off the meter and start charging a different rate. N.T. 178, ln 22 – N.T. 179, ln 4. He also testified that an unscrupulous driver could just charge the higher rate all the time. N.T. 179, ln 5-7.

He testified that he has been approached and called on the phone by customers who were confused about what rate the meter should be charging them. N.T. 179, ln 4. He testified that he has also spoken to Mr. Corane about a customer complaining . N.T. 179, ln 15-20. He testified that the problem is that the customer base does not know which meter rate to follow. N.T. 180, ln 13-18.

He testified that vehicles which are not self-designated, meaning that they are only under the PUC rate, they only have one rate on the meter. N.T. 180, ln 13-18. He testified that he has attempted to have vehicles that operate in Philadelphia and that only have the Philadelphia rate, but the PUC insists that all of his vehicles are under their authority. N.T. 180, ln 23 – N.T. 181, ln 5. He testified that the PPA asked Germantown to remove the PUC number off of a vehicle, but that under the PUC regulations he would be fined if the number was not on the vehicle. N.T. 181, ln 6-12. He testified that, as a result of this situation, he cannot self-designate vehicles and he must comply with the PUC regulations at all times. N.T. 181, ln 12-14.

He testified that during the inspection he immediately corrected any safety violations. N.T. 181, ln 15-20. He testified that the vehicles are inspected by his mechanics on a regular basis. N.T. 181, ln 21-25. He testified that the PPA inspects his vehicles every six months, the PUC inspects the vehicles annually, and both agencies do routine field inspections on the vehicles within Philadelphia. N.T. 182, ln 1-10. He testified that the PUC even does field inspections of his vehicles in connection with point to point trips within Philadelphia. N.T. 182, ln 18-23. He testified that during the PUC inspection, any violation that the PUC brought to his attention, that his mechanics did not find on their own, was immediately corrected before he would allow the vehicle to be

operated. N.T. 183, ln 2-7. He testified that the majority of the violations were corrected and shown to the inspectors before they completed the inspection, however a few required more attention and that his records indicate that all repairs were complete by the time the came back to do verification inspections. N.T. 183, ln 8-15.

He testified that the compliant decal is designed for the consumer to know where to file complaints and how to file complaints. N.T. 188, ln 21-23.

He testified that these decals are issued by the PUC and are mandatory to put on each vehicle. N.T. 188, ln 23-25. He testified that this decal is sometimes put on the partition between the passenger compartment and the driver. N.T. 189, ln 10. He testified that the PUC requires the decal to be on the window, but are typically lenient and have allowed the decal to be on the partition in the past. N.T. 189, ln 11-14. He testified that he has personally found that placing the decal on the partition brings it to the customer's attention because it is right in front of them during their trip, and it makes it easier for them to read as well. N.T. 189, ln 15-17. He testified that in the new PPA regulations, it is mandatory that he place their consumer information in the car along with that of the PUC, so that it will say, "If there is a complaint contact the PPA" and then right next to that it will say "If there is a complaint contact the PUC." N.T. 189, ln 22 – N.T. 190, ln 3.

He testified that, according to the jurisdictional agreement, if a trip starts or ends in Philadelphia or point-to-point in Philadelphia, it is under the PPA's jurisdiction. N.T. 190, ln 19-22. He testified that, according to the jurisdictional agreement, if it's point-to-point in the suburbs, or from a point in the suburbs to outside the Commonwealth, then it is under the PUC's jurisdiction. N.T. 190, ln 23 – N.T. 190, ln 1.

He testified that, despite the jurisdictional agreement, the PPA's regulation allowing his company to self-designate vehicles it is not clear, because some of his vehicles start in the suburbs and end in Philadelphia, or go back to the suburbs and are still under the PUC. N.T. 191, ln 2-6.

He testified that, to test meters, each inspector takes a vehicle and takes it a stretch of road measured by the PUC to be a mile run. He testified that the inspectors have the driver pull up to a pole, they turn the meter on, they turn off the wait time on the meter, and then they complete the mile run. N.T. 191, ln 16-22. He testified that there are markings 100 feet on either side of the one mile mark, and that each vehicle has a tolerance of 100 feet in either direction. N.T. 191, ln 22-24. He testified that he finds it odd that the inspectors claimed the meters were not accurate, because he ran the cars himself and took down the numbers of the pulse rate. N.T. 192, ln 15-18. He testified that during this inspection, when a PUC officer told him the meter was running too fast, he was able to show them the numbers for each vehicle. N.T. 192, ln 19-22. He testified that during his most recent inspection the PUC officers claimed that more than five of his meters were not working correctly, and every time besides once the vehicle came out accurate on the mile run. N.T. 192, ln 23-1.

He testified that he has been General Manager of Germantown Cab Company since 2006. N.T. 193, ln 15-18. He testified that he has made improvements to the manner in which the taxicabs are managed with regard to rates. N.T. 194, ln 3-6. He testified that it is clear that the PUC takes rates very seriously, and that he wants to make sure that there are no meter violations. N.T. 194, ln 6-9. He testified that he did

everything he could possibility do to avoid meter violations, and that he tested the meters himself so that if the inspector said there was a violation he would be able to prove them wrong. N.T. 194, ln 9-11.

He testified that the period of notice prior to an inspection is discretionary with the staff, but that he has been told by the PUC that the notice does not have to exceed 24 hours. N.T. 194, ln 12-18. He testified that typically, if the inspection was to occur on a Monday he would be informed of it by the PUC the preceding Friday, and if the inspection was going to be on a Wednesday, he would receive the notice on Monday or Tuesday. N.T. 194, ln 19-24. He testified that this year he believes they gave him the weekend. N.T. 194, ln 25 – N.T. 195, ln 2.

He testified that during the weekend in which he had notice of the inspection, he particularly wanted to focus on the meters because he wanted to make sure this violation would not occur again. N.T. 195, ln 11-13. He testified that what he discovered was that there may be something inaccurate with the way the PUC is conducting these tests. N.T. 195, ln 13-15. He testified that in the past he never would have argued with a PUC officer or questioned their integrity or authority, that if they said there was a problem with the meter he would just give it to his meter man to fix it. N.T. 195, ln 20-25.

He testified that the PPA told his company that they are not allowed to have locks or keys on the gas caps, which would secure the gas cap to the vehicle. N.T. 196, ln 3-6. He testified that this is not a PUC requirement. N.T. 196, ln 8-9. He testified that drivers constantly forget to replace their gas caps at the gas station, and that he has to replace gas caps for the vehicles on a daily basis, which is quite expensive. N.T. 196, ln 11-24. He testified that the key secures the gas cap to the vehicle so that it cannot be forgotten by

the driver. N.T. 196, ln 20-22. He testified that he had to remove all keys and was not allowed to have any gas caps with keys. N.T. 196, ln 25 – N.T. 197, ln 2.

He testified that the PPA has taken the position over the years that the meters must be sealed by them. N.T. 197, ln 8-11. He testified that when it is necessary to have the meters recalibrated to otherwise adjusted, he has to take them to his meter man and have them all sealed at his expense, and then he has to take them to the PPA facility so that they can put their seal on the meters as well. N.T. 197, ln 16-21. He testified that the PPA is not responsible for the calibration, but to certify that the calibration was done correctly. N.T. 197, ln 22-24. He testified that the PPA puts their own seal on each meter with a serial number that identifies which vehicle it is assigned to. N.T. 198, ln 3-6. He testified that his self-designated vehicles are not only inspected by the PPA in terms of the accuracy of the meter, but also with regards to the safety of the vehicle. N.T. 198, ln 7-12. He testified that all of his self-designated vehicles should have a PPA sticker issued to them bi-annually; every six months they would have been issued a safety sticker confirming the safety of the vehicle and the accuracy of the meter. N.T. 198, ln 12-16.

The Commission then cross-examined Mr. Gabbay.

He testified that, regarding the violations his company has received, that his vehicles are on the road 24 hours a day, and that although the vehicles are inspected by his mechanics during the several day notice period before the inspection, there are a lot of things that can happen to a vehicle prior to it arriving back to the garage on the day of inspection. N.T. 199, ln 14-22. He testified that the tires are checked all the time

because the vehicles are on the road 24 hours a day; it is not something he would have prepared solely for a PUC inspection. N.T. 199, ln 23 – N.T. 200, ln 1.

He testified that customers do not know who to address a complaint to. N.T. 200, ln 16-17. He testified that in the event of complaints, even if the PPA receives a complaint they call the PUC, he still has to respond to the PUC, even though it may not be under their jurisdiction. N.T. 200, ln 20-24. He testified that he has to respond to both the PPA and PUC for the same complaint. N.T. 200, ln 25 – N.T. 201, ln 1. He testified that the problem is that the PUC takes the position that all of Germantown's vehicles are under their jurisdiction and he must have their rate. N.T. 202, ln 23 – N.T. 203, ln 1. He testified that it is not required of him that all of his vehicles have the PPA rate. N.T. 203, ln 14-15. He testified that the PPA says he can self-designate vehicles; therefore, he can choose which vehicles to put under their authority and at what time. N.T. 203, ln 15-18. He testified that the only reason he knows he has to have a PPA rate is they have enforced it on him. N.T. 203, ln 21-23. He testified that the PPA has passed regulations that say he must have a medallion rate. N.T. 203, ln 23-24..

He testified that it is confusing to the public that he has to put two rates in his cab, along with the two complaint decals. N.T. 204, ln 7-11. He testified that because different vehicles come from different places at different times, repeat customers get into different vehicles with different rates and different prices, which is tremendously confusing to the public. N.T. 204, ln 12-17.

## LEGAL ARGUMENT

### A. **WHEN IT ENACTED 2004-94, THE GENERAL ASSEMBLY DID NOT INTEND TO SUBJECT THE RESPONDENT FOR THE FIRST TIME TO THE REQUIREMENTS OF THE MEDALLION ACT**

A statute is never presumed to make any innovation in the rules and principles of the common law or prior existing law beyond what is expressly declared in its provisions. *Holton Estate*, 399 Pa. 241, 247. When the General Assembly does not expressly alter prior law, it may be presumed that it did not intend to change it. In enacting a statute, the legislature is presumed to have been familiar with the law, as it then existed and the judicial decisions construing it.

In *Dee Dee Cab, Inc. v. Pennsylvania Public Utility Commission*, 817 A.2d 593 (Pa. Cmwlth. 2003), the Commonwealth Court, upheld the Commission's denial of an application for authority filed by a common carrier with call or demand rights in a territory that included a portion of Philadelphia, who was applying for additional right in Philadelphia. In its decision, the Commonwealth Court recognized that such carriers were not included in the medallion taxicab system and that the Medallion Act and the Commission's regulations do not represent the totality of laws applicable to taxicab service in Philadelphia. The Court also cited the Commission decision in *Pennsylvania Public Utility Commission v. Genco Services, Inc., t/a Cheldon Radio Cab Co., Inc.*, 1992 Pa.PUC LEXIS 40 (PUC Docket No. A-00106517C912), which held that the Commission's regulation pertaining to medallion taxicabs did not apply to common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia. Accordingly, it may be presumed that the General Assembly was aware of both the Commission's interpretation of the Medallion Act and its applicability to

carriers such as Respondent, as well as the Commonwealth Court's recognition of this interpretation, when it enacted Act 2004-94 and the absence of an express provision changing the applicability of the law to carriers such as Respondent indicates that the General Assembly did not intend to make such a change.

**B. SECTION 5714(D)(2) OF THE PARKING AUTHORITIES LAW DOES NOT EXPRESSLY GIVE THE AUTHORITY POWER TO PROMULGATE REGULATIONS PERTAINING TO CARRIERS SUCH AS RESPONDENT, INDICATING THAT THE GENERAL ASSEMBLY DID NOT INTEND TO CHANGE THE APPLICABILITY OF THE MEDALLION ACT TO CARRIERS SUCH AS RESPONDENT**

Section 5714(d)(2) of the Parking Authorities Law provides that “carriers currently authorized to provide service to designated areas within [Philadelphia] on a non- citywide basis shall retain their authorization through the Authority;” however, Section 5714(d)(2) does not expressly empower the Authority to promulgate regulations pertaining to such carriers. The absence of express language giving the Authority power to promulgate regulations pertaining to such carriers indicates that the General Assembly did not intend to change the applicability of the Medallion from medallion taxicabs only. In fact, in 2006, the General Assembly passed legislation that would have amended Section 5714(d)(2) to give the Authority express power to promulgate regulations pertaining to carriers such as Respondent; but the legislation was vetoed by Governor Rendell and never became law.

The specific amendment to Section 5714(d)(2) provided:

Carriers currently authorized to provide service to designated areas within cities of the first class on a non-citywide basis shall retain their authorization [through] **pursuant to orders and regulations of** the Authority. **The Authority shall determine the geographic boundaries of such non-citywide authorization as necessary after an opportunity**

**for hearing.** The Authority shall not grant additional rights to new or existing carriers to serve designated areas within cities of the first class on a non-citywide basis.

The passage of a subsequent amendatory act giving the Authority explicit power to regulate carriers such as Respondent indicates that the General Assembly did not intend to empower the Authority to regulate such carriers when it enacted Act 2004-94.

**C. THE REPEAL AND SUBSTANTIAL REENACTMENT OF THE MEDALLION ACT INDICATES THAT THE GENERAL ASSEMBLY DID NOT INTEND TO GIVE THE AUTHORITY POWER TO REGULATE CARRIERS THAT WERE NOT SUBJECT TO THE MEDALLION ACT**

Other than the change in regulating agencies, the provisions in Chapter 57 of the Parking Authorities Law that apply to taxicabs are a substantial reenactment of the Medallion Act. Section 1962 of the Statutory Construction Act provides:

Whenever a statute is repealed and its provisions are at the same time reenacted in the same or substantially the same terms by the repealing statute, the earlier statute shall be construed as continued in active operation. All rights and liabilities incurred under such earlier statute are preserved and may be enforced.

Applying Section 1962 to the present case, it is clear that the General Assembly intended the provisions of Chapter 57 of the Parking Authorities that apply to taxicabs to apply only to medallion taxicabs.

**D. THE TRANSFER PROVISIONS OF ACT 2004-94 INDICATE THAT THE GENERAL ASSEMBLY DID NOT INTEND TO TRANSFER REGULATORY POWER OVER RESPONDENT TO THE AUTHORITY**

Section 22(1) of Act 2004-94 provides: “The Pennsylvania Public Utility Commission’s appropriations, allocations, documents, records, equipment, materials, *powers*, duties, contracts, rights and obligation which are utilized or accrue in connection with the functions under 66 Pa.C. Ch. 24 [the Medallion Act] and in connection with

limousine regulation in cities of the first class shall be transferred to the Philadelphia Parking Authority in accordance with an agreement between the commission and the authority.” (emphasis added). But there is no similar provision concerning the transfer of Commission powers in connection with common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia anywhere in Act 2004-94. Furthermore, Section 22(2) of Act 2004-94 provides that regulations, orders, programs and policies of the Commission under the Medallion Act shall remain in effective until specifically amended, rescinded or altered by the Authority; it did not provide for any alteration of regulations, orders, programs and policies pertaining to common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia.

The absence of provisions addressing carriers other than medallion taxicabs indicates that the General Assembly did not intend Chapter 57 of the Parking Authorities Law to apply to carriers such as Respondent.

**E. THE GENERAL ASSEMBLY WOULD HAVE RESERVED  
A SEAT ON THE ADVISORY BOARD FOR CARRIERS  
SUCH AS RESPONDENT IF IT HAD INTENDED THE  
AUTHORITY TO HAVE POWER TO REGULATE SUCH  
CARRIERS**

In addition to the foregoing, various provisions of Act 2004-94 indicate that the General Assembly did not intend the Authority to have the power to regulate common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia. For example, Section 5702 of the Parking Authorities Law, 53 Pa.C.S. §5702, provides for the establishment of an advisory committee to consider issues and questions submitted to it by the Authority regarding the regulation, enforcement,

compliance and operation of taxicabs and limousines in Philadelphia. The advisory committee is empowered to comment on these issues and questions and may submit its own suggestions and proposals to the Authority on topics considered important by a majority of its members. Section 5702 requires membership of the committee to include, *inter alia*, a taxicab driver, a medallion owner, a dispatch owner, and a limousine owner, but it does not require membership of the advisory committee to include the owner of a common carrier with rights to provide call or demand service in a territory that includes a portion of Philadelphia. The omission of a mandatory seat on the advisory board for such carriers indicates that the General Assembly did not intend the Authority to exercise regulatory power over such carriers, otherwise the General Assembly would have provided representation for these carriers on the Advisory Committee, whose participation in the regulatory rulemaking process is mandatory.

**F. THE GENERAL ASSEMBLY WOULD HAVE GIVEN THE AUTHORITY EXPRESS POWER TO REVOKE THE CERTIFICATES OF CARRIERS SUCH AS RESPONDENT IF IT HAD INTENDED TO GIVE THE AUTHORITY THE POWER TO REGULATE SUCH CARRIERS**

Section 5713(b) of the Parking Authorities Law, 53 Pa.C.S. §5713(b), which empowers the Authority to cancel or revoke certificates of public convenience held by medallion owners, upon due cause shown, for violations of the act or authority regulations, also indicates that the General Assembly did not intend the Authority to exercise regulatory control over common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia. Likewise, Section 5741.1 of the Parking Authorities Law, 53 Pa.C.S. §5741.1, which empowers the Authority to rescind or revoke a certificate of public convenience granted to an existing holder or new

recipient for the operation of limousines within Philadelphia, supports the same conclusion. The power to cancel or revoke a certificate of public convenience is an essential element of the power to exercise regulatory control over a common carrier. Yet, the General Assembly failed to give explicit power to the Authority to cancel or revoke certificates held by common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia. On the other hand, the Commission does have the power to cancel the certificates of such carriers.

**G. IF THE GENERAL ASSEMBLY HAD INTENDED THE AUTHORITY TO REGULATE TWO CLASSES OF CARRIERS WITH CALL OR DEMAND RIGHTS, IT WOULD HAVE ESTABLISHED A METHOD FOR ALLOCATING REGULATORY EXPENSES BETWEEN SUCH CLASSES**

Prior to the enactment of Act 2004-94, medallion taxicabs were the only public utilities under the jurisdiction of the Commission that were exempt from the provisions of Section 510 of the Public Utility Code, 53 Pa.C.S. §510 (pertaining to assessment for regulatory expenses upon public utilities). See 53 Pa.C.S. §510(b)(5) (now repealed). Section 510 requires the Commission to make an annual assessment for public utilities using a method that groups utilities by type of service and allocates regulatory expenses to each group according to a formula based on revenues. This allocation method is equitable because it takes into account the relative earning capacity of each individual utility, which varies according to the nature of the service and the authorized territory where it is provided.

Medallion taxicabs were exempt from the annual assessment and allocation formula, which applied to all other public utilities, because all 1600 medallion taxicabs have identical operating authority in terms of territory (Philadelphia) and the number

vehicles that may be operated (1) and therefore, have identical revenue potential, making allocation unnecessary. Medallion taxicab are subject to an annual medallion fee, which allocates regulatory expenses uniformly based on the identical nature of the service and territory in which it is provided. Section 510(b)(5) was repealed by Act 2004-94 when regulatory power over medallion taxicabs was transferred to the Authority, but common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia remain subject to its provisions and are assessed on an annual basis by the Commission according to the method described in Section 510.

If the General Assembly had intended to give the Authority regulatory control over common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia, it would have given the Authority the power to make an annual assessment on such carriers and established a method of allocating regulatory expenses. The General Assembly also would have established an equitable method of allocating regulatory expenses to these carriers that takes into account the nature of the service they provide and the differences in their authorized territories, which by necessity requires consideration of revenues and does not relate to the number of vehicles operated.

Medallion taxicab service is different from any other call or demand service because it is limited to the operation of one vehicle and all medallion taxicabs have operate in the same territory; therefore, it is equitable to allocate regulatory expenses on a per medallion basis without the necessity, or the regulatory burden, of taking revenues into account. But it is not equitable to apply this allocation method to any other common carrier because all other common carrier rights permit the operation of an unlimited number of vehicles and the revenue that each carrier may generate varies according to the

unique characteristics of the territory in which it operates, not by the number of vehicles it operates. Revenues are not directly related to the number of vehicles being operated and, because of the unique demands within a territory, not every vehicle has the same earning potential. Accordingly, any assessment methodology that does not take revenues into account, rather than the number of vehicles being operated cannot be equitable.

The General Assembly understands this concept because it established an assessment methodology for the Commission on this basis when it empowered the Commission to make assessments for regulatory expenses. The General Assembly would have established an equitable assessment methodology for the Authority if it had intended the Authority to have power to regulate more than one class of common carrier with call or demand rights.

**H. THE GENERAL ASSEMBLY DID NOT INTEND THE ABSURD RESULT OF ESTABLISHING A SYSTEM OF DUAL REGULATION FOR ONLY ONE CLASS OF COMMON CARRIER IN THE COMMONWEALTH**

In addition to the foregoing, Section 1922(1) of the Statutory Construction Act, 1 Pa.C.S. §1922(1) provides that, when ascertaining legislative intent, it is presumed that the General Assembly did not intend a result that is absurd, impossible of execution or unreasonable. In this regard, both the Authority and the Commission have acted contrary to legislative intent by establishing a system of dual regulation for common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia while administering and enforcing a system of single regulation for all other motor carriers operating within the Commonwealth. It is absurd and unreasonable for common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia to comply with two sets of conflicting regulations, administered

and enforced by two separate regulatory agencies, while every other motor carrier in Pennsylvania is subject to only one set of regulatory standards, administered and enforced by one regulatory agency.

**I. NEITHER THE COMMISSION NOR THE AUTHORITY  
HAVE ACTED CONSISTENTLY WITH REGARD TO THE  
APPLICABILITY OF ACT 2004-94 TO CARRIERS SUCH  
AS RESPONDENT**

When the Commission transferred its power to the Authority pursuant to Act 2004-94, the Commission stopped administering and enforcing regulations pertaining to medallion taxicabs and continued to administer and enforce regulations pertaining to Respondent. The Commission routinely inspects the vehicles, meters, and equipment of Respondent and inspects driver records to ensure compliance with Commission regulations pertaining to common carriers with rights to provide call or demand service and requires the Respondent to keep tariffs and proof of insurance on file with the Commission, but does not require medallion taxicabs to do any of these things. In addition, the Commission requires Respondent to file annual reports and allocates its regulatory expenses to Respondent, as it does with all other public utilities within its jurisdiction, through an annual assessment, which Respondent has paid to the Commission every year since the enactment of Act 2004-94.

The Authority has also not always acted consistently with regard to the applicability of Act 2004-94. When the Authority implemented Section 23(2) of Act 2004-94, which pertains to the Hospitality Initiative to make taxicab service in Philadelphia more consumer-friendly, it excluded carriers such as Respondent from participation in the initiative. When the Authority adopted its initial penalty schedule, it

adopted penalties for “Medallion and Limousine Owners” but not for carriers such as Respondent.

Respondent also needs to address the Jurisdictional Agreement between the Authority and the Commission. Section 22(4) of Act 2004-94 provides that the Commission and Authority “are empowered to resolve by mutual agreement any jurisdictional issues that may be associated with the transfer” of the Commission’s functions under the Medallion Act and in connection with limousine regulation in Philadelphia (hereinafter “Jurisdictional Agreement”). On March 12, 2005, the Commission published the Jurisdictional Agreement in the Pennsylvania Bulletin.

## **SECTION 2 OF THE JURISDICTIONAL AGREEMENT**

Section 2 of the Jurisdictional Agreement pertains to common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia and provides:

### *Partial Authority Taxicabs*

Currently, there are carriers authorized to provide taxicab service to designated areas within Philadelphia on a non-city wide basis. Section 11 of Act 94 provides that the PPA has jurisdiction over these carrier's operations within Philadelphia. These carriers also hold authority from the Commission to serve designated areas outside Philadelphia. The Commission and the PPA agree that service provided under dual authority to/from points within the PPA authorized area (in Philadelphia) to/from points within the Commission authorized area (outside Philadelphia), will be regulated by the PPA.

The Authority claims that it has the power to regulate common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia pursuant to Section 2 of the Jurisdictional Agreement.

### **A. SECTION 2 OF THE JURISDICTIONAL AGREEMENT IS CONTRARY TO LAW BECAUSE THE AUTHORITY DOES**

**NOT HAVE THE POWER TO REGULATE CARRIERS  
SUCH AS RESPONDENT**

As a preliminary matter, Section 2 is based on a false premise, namely, that Section 11 of Act 2004-94 provides that the Authority has jurisdiction over common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia. Section 11 of Act 2004-94 is the provision enacting Section 5714 of the Parking Authorities Law, 53 Pa.C.S. §5714. As noted above in Count III, Section 5714(d)(2) provides that such carriers shall retain their authorization through the Authority, but it does not give the Authority explicit power to promulgate regulations pertaining to such carriers as the 2006 amendment to the Act, which did not become law, indicates. Also for all of the reasons set forth above, the Authority does not have the power to regulate these carriers.

**B. SECTION 2 OF THE JURISDICTIONAL AGREEMENT IS  
CONTRARY TO SECTION 22(4) OF ACT 2004-94  
BECAUSE IT DOES NOT PERTAIN TO THE TRANSFER  
OF THE COMMISSION'S POWERS AND FUNCTIONS  
UNDER THE MEDALLION ACT.**

In addition, Section 2 of the Jurisdictional Agreement is contrary to Section 22(4) of Act 2004-94, because it does not pertain to a jurisdictional issue associated with the transfer of the Commission's functions under the Medallion Act and in connection with limousine regulation in Philadelphia. The regulation of common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia was not part of the Commission's functions and powers under the Medallion Act. Rather, the Commission regulated these carriers pursuant to provisions in the Public Utility Code pertaining to common carriers generally and to regulations promulgated by the Commission in 52 Pa. Code Ch. 29.

Act 2004-94 did not amend, repeal or modify any portion of the Public Utility Code pertaining to common carriers generally and the General Assembly did not extend the validity of regulations in 52 Pa. Code, Chapter 29 that pertain to these carriers in Section 22(2) of Act 2004-94 as it did with regard to the medallion taxicab regulations in 52 Pa. Code, Ch. 30 or the limousine regulations in 52 Pa. Code Ch. 29. Accordingly, the Commission and the Authority exceeded their statutory powers under Section 22(4) of Act 2004-94.

**C. SECTION 2 OF THE JURISDICTIONAL AGREEMENT VIOLATES CHAPTER 11 OF THE PUBLIC UTILITY CODE BY ILLEGALLY BIFURCATING RESPONDENT OPERATING TERRITORY WITHOUT DUE CAUSE AND WITHOUT AFFORDING DUE PROCESS**

Section 2 of the Jurisdictional Agreement is also contrary to the Chapter 11 of the Public Utility Code, 66 Pa.C.S. Ch. 11, which pertains to the issuance of certificates of public convenience. The General Assembly gave the Commission power to issue certificates of public convenience pursuant to Chapter 11 upon application and proof that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. Upon approval, the Commission is empowered to issue a certificate of public convenience that includes a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.

Neither the nature of the service nor the operating territory may be modified or cancelled without due cause shown and without affording due process to the certificate holder. Section 2 of the Jurisdictional Agreement is contrary to Chapter 11 of the Public Utility Code because it bifurcates Respondent's operating territory into a Philadelphia territory and a non-Philadelphia territory. Neither the Commission nor the Authority

have the power to modify the nature of the service or the territory of a certificate holder without due cause and without holding a hearing.

**D. SECTION 2 OF THE JURISDICTIONAL AGREEMENT IS CONTRARY TO THE PUBLIC UTILITY CODE AND THE PARKING AUTHORITIES LAW BECAUSE IT ESTABLISHES TERRITORIAL JURISDICTION FOR THE COMMISSION AND THE AUTHORITY**

In addition to the foregoing, Section 2 of the Jurisdictional Agreement is contrary to both the Public Utility Code and the Parking Authorities Law because it establishes territorial jurisdiction for the Commission and the Authority. Pursuant to their respective enabling acts, the Commission and the Authority have coextensive territorial jurisdiction that spans the entire Commonwealth of Pennsylvania.

The General Assembly granted the Commission and the Authority jurisdiction over public utilities, not territory. The personal and subject matter jurisdiction of the Commission and the Authority differs only with regard to the classes of utilities regulated and the subject matter of such regulation, but does not differ with regard to the territorial limits of their jurisdiction because they are coextensive. Section 2 of the Jurisdictional Agreement attempts to resolve a jurisdictional issue on a territorial basis, instead of a personal or subject matter basis, and is therefore, contrary to the enabling acts of the Commission and the Authority.

For all the foregoing reasons, and to the extent the Jurisdictional Agreement may be interpreted as empowering the Authority to promulgate regulations or adopt orders, policies or program pertaining to common carriers with rights to provide call or demand service in territories that include a portion of Philadelphia, Section 2 of the Jurisdictional

Agreement is invalid as are any regulations, orders, programs or policies adopted by the Authority pursuant thereto.

For all of the foregoing reasons, Respondent respectfully requests the Commission to grant the relief requested in its Motion for Declaratory Order.

Respectfully submitted,

A handwritten signature in red ink, appearing to read "Michael S. Henry", with a stylized flourish at the end.

Michael S. Henry  
Attorney for Respondent  
Germantown Cab Company