BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF TRANSPORTATION AND SAFETY	: : :	Docket No. C-2010-2175330

RESPONDENT'S EXCEPTIONS

Respondent, Germantown Cab Company, by and through its attorney, Michael S. Henry, Esquire, hereby submits its exceptions to the Initial Decision of the Office of Administrative Law Judge issued July 18, 2012, by the Honorable Cynthia Williams Fordham.

I. GENERAL EXCEPTION

On June 30, 2012, the General Assembly approved House Bill 2390 ("Act 119 of 2012"), which enacted substantive changes in the Parking Authorities Law, 53 Pa. C.S. Ch. 57, as it pertains to the regulation of taxicab and limousine service in Philadelphia. A true and correct copy of the legislation is attached hereto and marked as Exhibit "A." Specifically, Act 119 of 2012 amended Section 5714(d)(2) to grant the Philadelphia Parking Authority ("Authority") exclusive jurisdiction over Respondent and other motor carriers with rights to provide taxicab service in designated areas within Philadelphia. Pursuant to the amendment, which became effective upon approval of the Governor on July 6, 2012, the Commission no

longer has jurisdiction over Respondent. Accordingly, this matter should be dismissed as the Commission no longer has power to impose any sanctions against Respondent.

In the alternative, Respondent also takes exception to the denial of Respondent's Motion for Declaratory Order, which the Administrative Law Judge ("ALJ") denied in her decision. Respondent filed a Motion for Declaratory Order, which asserted that the Commission had exclusive jurisdiction over Respondent, despite the enactment of Act 94 of 2004 and the Commission's Jurisdictional Agreement with the Authority regarding the regulation of certain motor carriers, including motor carriers, such as Respondent, with call or demand rights in territories that include small portions of Philadelphia. Respondent will not repeat the arguments that it set forth in its motion and the subsequent brief it filed in support thereof, but incorporate all such arguments herein by reference. Respondent asserts that the granting of the motion was necessary in order to make determinations relating to some of the allegations in the complaint, particularly those relating to meters and rates.

Both the Commission and the Authority take the position that they have dual regulatory authority over carriers, such as Petitioner, with call or demand rights in territories that include designated areas within Philadelphia. The absurdity of such a position is revealed by prosecutions like the present one, where enforcement

officers attempt to enforce one set of regulations while the regulated entity may, at the same time, be required to comply with competing and possibly contradictory standards.

For example, the Commission charged Respondent with nineteen (19) violations related to meters and rates. See Paragraphs 5, 9, 13, 15, 17, 21, 23, 25, 29, 37, 39, 43, 45, 49, 51, 53, 54, 60, and 65. The majority of these charges allege that the Respondent's meters were not properly calibrated resulting in higher or lower rates than the rates Respondent has on file with the Commission in its tariff. But the system of dual regulation makes these allegations unenforceable.

The first problem associated with enforcing a meter violation under the dual system of regulation is that Respondent has rates on its meters that are not contained in its tariff on file with the Commission. The Commission enforcement officers do not know what these rates are and do not care what they are when they enforce Commission regulations pertaining to meters and rates. See e.g., N.T. 102, line 21-25. But they must know and care about these rates in order to determine whether Respondent's meters are properly calibrated. How else can they determine whether the rate they are measuring is the same rate that is on file with the Commission in the Respondent's tariff? If a rate is measured and it does not correspond with the rate on file with the Commission, how does an enforcement

officer know whether the discrepancy is caused by poor calibration rather than measuring the wrong rate?

In fact, the Commission's failure to regulate the rates the Authority requires Respondent to charge, at least to the extent of requiring Respondent to file these rates with the Commission is a violation of Commission regulations. Section 23.1 of the Commission's regulations, 52 Pa. Code §23, defines the term "tariff" as "[s]chedules of rates, rules, regulations, practices or contracts involving *any* rate, including contracts for interchange of service and, in the case of a common carrier, other than a common carrier of property in the transportation of property, schedules showing the method of distribution of the facilities of the common carrier." (emphasis added). Section 23.1 does not limit the rates that are required to be filed in a motor carrier's tariff with the Commission to only those rates regulated by the Commission; *it applies to any, and all, rates*. Ironically, prior to Act 94, a motor carrier that had a rate on its meter that was not in its Commission tariff was a serious violation. Now it is a matter of indifference, which is a symptom of a major regulatory problem. Without the filing of all rates on a motor carrier's meters, it is impossible to enforce any rate because there is no way to establish the rate being measured is the rate that is on file with the Commission.

Likewise, Section 23.11(a) of the Commission's regulations requires that "[b]efore any carrier furnishes or offers to furnish *any service*, it shall file with the

Commission tariffs showing the rates or other compensation demanded for such service, including COD services, and *all rules governing the furnishing of the service or the application of the rates demanded therefor*, if the filing of a tariff with the Commission is not construed as an approval by it of the rates or rules contained therein, or as a waiver of any other requirement of 66 Pa.C.S. § § 101—3315." Thus, rates that a motor carrier is required to charge by another regulatory body must also be filed with the Commission, even if the Commission is not the entity that must approve the rate. This is further supported by subparagraph (b) of the regulations which states: "The tariffs of carriers also subject to the jurisdiction of a Federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by such Federal agency." If the Commission requires a carrier's federal rates to be on file with the Commission, then it should require the Authority's rates as well. But it does not do so.

The second problem with the dual system of regulation is the Jurisdictional Agreement between the Authority and the Commission and the Authority's practice of allowing carriers to self-designate the vehicles that are subject to the Authority's regulation. Under this practice, a motor carrier may designate less than all of its fleet for regulation by the Authority. Respondent believes that the Commission and the Authority exceeded the scope of their statutory powers when they entered into the Agreement and also believes the Authority's practice of self-

designation is utterly unworkable; however, the ALJ denied Respondent's motion regarding the Jurisdictional Agreement and the Authority's practice of self-designation, leaving Respondent and the Commission with an absurd regulatory environment.

Section 2 of the Jurisdictional Agreement 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.

According to the jurisdictional agreement and Section 5714(c) of the Parking Authorities Law, 53 Pa. C.S. §5714(c) and the Authority's practice regarding self-designation, the vehicles that Respondent designates for service subject to the exclusive jurisdiction of the Authority may provide point-to-point service:

(a) within the Philadelphia portion of its authorized territory;
(b) from the Philadelphia portion of its authorized territory to the non-Philadelphia portion of its authorized territory;
(c) from the Philadelphia portion of its authorized territory to any other point in the Commonwealth;
(d) from the non-Philadelphia portion of its authorized territory to any point within its authorized territory in Philadelphia;
(e) from any point out of its authorized territory to any point within the Philadelphia portion of its authorized territory if the request for service originates by telephone.

The way the Authority and the Commission see it, a self-designated vehicle subject to the exclusive regulation of the Authority may not provide point-to-point service:

(a) within its authorized territory outside of Philadelphia;
(b) from its authorized territory outside of Philadelphia to any point in the Commonwealth that is not within the Philadelphia portion of its authorized territory;
(c) from any point outside of its authorized territory to its authorized territory outside of Philadelphia if the request for service originates by telephone.

Only non-designated vehicles would be permitted to make these trips and these are the only vehicles that would be subject to the Commission's jurisdiction. Thus, in order to enforce Commission regulations, a Commission enforcement officer would have to determine whether the vehicle was a self-designated Authority vehicle or a non-designated vehicle because self-designated Authority vehicles are subject to the exclusive jurisdiction of the Authority.

In the present case, however, the Authority did not establish that the vehicles it inspected were self-designated or non-designated vehicles. Thus, it did not establish whether it had jurisdiction over the vehicles it inspected. For this reason the violations should not be sustained.

It is not Respondent's fault that the Commission and the Authority have established an absurd and completely unworkable enforcement regime.

Finally, Respondent takes exception to the ALJ's finding with regard to the total amount of the fines imposed. The total amount of fines imposed by the ALJ was $9,950, which does not correspond to the findings in her decision on pages 17-19. According to Respondent's calculations, the total amount of the fines is $3,250.

WHEREFORE, Respondent respectfully request this Honorable Commission to grant its exceptions and dismiss the complaint or in the alternative modify the fine amount.

Respectfully submitted,

Michael S. Henry
Attorney for Respondent