

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

MOTION FOR DECLARATORY ORDER

Respondent, Germantown Cab Co., by and through its attorney, Michael S. Henry, Esquire, hereby moves this Honorable Commission to dismiss the complaint in the following matter for the following reasons:

1. Petitioner, Germantown Cab Co., is a Commission-certified motor carrier that holds a certificate of public convenience that authorizes it to provide call or demand service in a territory that includes a small portion of the City of Philadelphia.

2. This matter involves a Formal Complaint initiated by the Commission’s Bureau of Transportation and Safety (“BTS”) on August 3, 2010, alleging various violations of the Commission’s regulations pertaining to common carriers under Chapter 29 of Title 52 of the Pennsylvania Code, 52 Pa. Code Ch. 29.

3. On August 23, 2010, Respondent, Germantown Cab Co. (“Germantown”) filed a timely answer to the complaint denying the allegations.

4. On October 25, 2011, a hearing was held 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.

5. 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 concerning the Commission's jurisdiction, along with its Main Brief.

6. Germantown does not contend that the Commission lacks jurisdiction over this proceeding.

7. Rather, Germantown contends that the Commission has exclusive jurisdiction and regulatory authority over Germantown.

8. It is necessary for the Commission to clarify this issue in the context of the present matter because the Philadelphia Parking Authority ("Authority") claims that the General Assembly gave it regulatory authority and jurisdiction over Germantown pursuant to Act 2004-94 (H.B. 2654), P.L. 758 ("Act 94"), which repealed the Medallion Act, 66 Pa.C.S. §510(b)(5), §1103(c) and Ch. 24 (now repealed) and amended the Parking Authorities Law by adding 53 Pa.S.C. §5505(d)(23) and (24) and Ch. 57.

9. Act 94 transferred the Commission's functions under the Medallion Act and with regard to the regulation of limousine service in Philadelphia to the Authority. See Section 22 of Act 94.

10. Germantown does not operate medallion taxicabs and, as the ALJ in the present matter found in a Recommended Decision that was adopted by the Commission 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), motor carriers with call or demand rights in territories that include a portion of Philadelphia are not subject to the requirements of the Medallion Act. See also, *Application of Penn Cab Company*, PUC Docket No. A-00110733

(June 26, 1996) (non-medallion taxicabs with rights to operate in Philadelphia are “grandfathered” under the Medallion Act).

11. Accordingly, Act 94’s transfer of the Commission’s regulatory functions under the Medallion Act had no effect on the Commission’s regulatory functions with regard to Germantown or the other motor carriers with call or demand rights in territories that include a portion of Philadelphia.

12. But, since the effective date of Act 94, the Authority has asserted that it may regulate the operations of such motor carriers and has attempted to promulgate regulations that pertain to them.

13. The Authority’s first attempt to assert regulatory authority over such motor carriers failed because the Authority promulgated its initial set of regulations without complying with the statutory rulemaking procedures that apply to all Commonwealth agencies. See *Germantown Cab Company v. Philadelphia Parking Authority*, 2012 Pa. LEXIS 149 (Pa., January 20, 2012).

14. As a consequence of its failure in this regard, none of the regulatory provisions the Authority adopted were valid, even though it attempted to enforce them and obtained partial compliance from Germantown and other similarly situated motor carriers through the use of threats and coercion.¹

¹ In its decision, the Supreme Court suggested that the Authority is responsible for creating a regulatory void during the period after it adopted its initial set of regulations: “The Authority’s allusions to a regulatory void raise legitimate public policy concerns, but these are not persuasive in terms of the requirement to comply with the CDL for the reasons we have discussed above. (citation omitted) As explained, the General Assembly took pains to assure that the PUC’s rules and regulations would remain extant until the Authority provided differently, apparently contemplating that the Authority would do so in an orderly and lawful fashion. See Act 94, §22. To the extent that a regulatory void has unfolded, this reasonably may be viewed as a result of the PPA’s failure to take protective measures to maintain the integrity of the regulatory

15. More recently, the Authority has attempted to assert regulatory authority over Germantown and the other motor carriers with call or demand rights in territories that include a small portion of Philadelphia by promulgating a new set of regulations, which were published in the Pennsylvania Bulletin on December 3, 2011. Pennsylvania Bulletin, Volume 41, Number 49, December 3, 2011. See <http://www.pabulletin.com/secure/data/vol41/41-49/2099.html>.

16. Germantown and others have challenged the validity of these regulations both on a procedural basis and on a substantive basis and these issues are currently before the Commonwealth Court in the matter of *Bucks County Services, Inc., et al v. Philadelphia Parking Authority*, Docket No. 584 MD 2011.

17. The Commonwealth Court also recently issued a decision in *Sawink, Inc., et al v. Philadelphia Parking Authority*, 2012 Pa. Commw. LEXIS 4, which addressed the Authority's power to impound taxicabs operated by Commission-certified carriers, such as Germantown.

18. The *Sawink* case is significant for the purposes of the issues presented in this matter because the Commonwealth Court described Germantown as a motor carrier "authorized by the PUC to provide call or demand service in a territory that includes part of Philadelphia and part of Montgomery County" and considered the applicability of the impoundment provision in Section 5714(g) in the context of Germantown's status as a Commission certified entity, not as an Authority-certified entity.

framework it inherited from the PUC throughout the years during which it has been contesting its Commonwealth agency status, see [Blount, 600 Pa. at 277, 965 A.2d at 226](#), then litigating the fallback position that it was otherwise exempted from the rulemaking requirements applicable to Commonwealth agencies. In any event, it is the terms of the material statutes — and not the ensuing anecdotal experience — which governs the statutory interpretation. Moreover, since that the PPA's presently promulgated regulations cannot be deemed valid for any purpose, see 45 P.S. §1208; 45 Pa.C.S. §722(c), those regulations themselves, at least, do not serve as an impediment to enforcement by the Authority of the prior regulatory regime until it can comply with its rulemaking responsibilities as a non-exempt Commonwealth agency.

19. Ultimately, the Commonwealth Court will decide whether the nature and extent of the Authority's jurisdiction and regulatory power over Germantown and other Commission-certified motor carriers with call or demand rights in territories that include a portion of Philadelphia; however, the issue is presented in the present matter and must be resolved in order to adjudicate the violations that are at issue in this matter.

20. Specifically, several of the violations in the present matter involve regulatory requirements that were also addressed in the Authority's invalid regulations.

21. For example, the Complaint alleges that Germantown violated 52 Pa.Code §314(b), which provides, in pertinent part:

(b) *Meters.* Meters must conform with the following requirements:

(1) A call or demand vehicle operated within this Commonwealth shall be equipped with a meter.

(2) The meter shall be installed in the front of the vehicle so that, at all times, it is plainly visible to and the fare is readily ascertainable by all occupants of the vehicle. The face of the meter must be properly illuminated at all times.

(3) No meter affixed to a vehicle may be operated from a drive other than the transmission of the vehicle unless some other method is, upon petition, specifically approved by the Commission.

(4) Unless otherwise permitted by the Commission, the meter and meter driving equipment must be sealed so that the meter case, meter driving equipment or additional gear boxes, if any, cannot be disconnected without breaking a seal.

(5) The responsibility for sealing the meter and appurtenant equipment and for maintaining the seals intact while the vehicle is in operation lies with the certificateholder.

(6) It is the responsibility of the certificate holder to cause the meters to be so regulated that the fare is calculated and registered in accordance with the current tariff rates on file with and approved by the Commission.

22. Several of the BTS enforcement officers testified that most of Germantown's vehicles are equipped with meters that are programmed with two rates: Rate 1 and Rate 2.

23. The officers testified that Rate 1 is the rate is the Authority-approved rate and Rate 2 is the Commission-approved rate.

24. The officers testified that Germantown's tariff on file with the Commission only contains Rate 2.

25. The officers testified that Rate 2 only applies to certain trips provided by Germantown and that Germantown is permitted to charge a rate that was not part of its Commission-approved tariff (the Authority-approved rate) when it provided other trips.

26. The officers testified that Germantown was responsible for calibrating and sealing its own meters.

27. Germantown's manager testified that the Authority's regulations, which were void *ab initio*, required both medallion taxicabs and motor carriers with call or demand rights in territories that include a portion of Philadelphia to charge a uniform rate, even though Section 5720 of the Parking Authorities Law, 53 Pa.C.S. §5720, only requires medallion taxicabs to charge uniform rates.²

28. All of the carriers with call or demand rights in territories that include a portion of Philadelphia, including Germantown, had Commission-approved rates that were different than the rates charged by medallion taxicabs.

29. By establishing uniform rates for medallion taxicabs and carriers such as Germantown, the Authority sought to protect medallion taxicabs from competition.

30. But, since carriers such as Germantown, have a statutory right to set their own rates, provided such rates are just and reasonable, the Authority adopted regulations to restrict the certificates of carriers such as Germantown, who wanted to maintain their existing tariffs.

² Section 5720 of the Parking Authorities Law, 53 Pa.C.S. §5720 is a substantial reenactment of Section 2410 of the Medallion Act, 66 Pa.C.S. §2410, which also required medallion taxicabs to charge a uniform rate.

31. Accordingly, the Authority adopted regulations that required carriers such as Germantown to cap the number of vehicles they were permitted to operate in order to maintain their existing tariffs.

32. Notwithstanding the dubious legality of such a regulation, Germantown elected to change its tariff to include the uniform rate rather than accept restrictions on its operating authority in the form of a cap on the number of vehicles it was permitted to operate.

33. As a consequence, Germantown maintains a Commission-approved tariff and an Authority-approved tariff, which are used for different trips depending on the origin and destination of the trip.³

34. Obviously, many problems arise from this regulatory scheme.

35. First, by allowing such a regulatory scheme to exist, the Commission permits Germantown to charge rates that are not contained in its tariff, as the Authority-approved rate is not contained in its Commission-file tariff.

36. Second, because the competing tariffs apply depending on the origin and destination of the trip being provided, the riding public can be charged two different rates for trips that travel along identical routes depending on the direction travelled.

37. Third, a meter with two rates, each regulated by a different agency, creates a condition where the wrong rate can be charged to Germantown's customers, either as a result of fraud or confusion on the part of the driver.

38. At the time of the inspection from which the alleged violations arose, Germantown was making a good faith effort to comply the standards of both the Authority and

³ In actuality, there is no tariff on file with the Authority, as the Authority simply instructs Germantown to charge the same rate as medallion taxicabs as it changes from time to time.

the Commission, even though it was challenging the validity of the Authority's regulations in the courts.

39. The issue of dual regulation by the Commission and the Authority complicates the evaluation and culpability of Germantown and must be resolved before the Commission reaches the merits of the complaint in the present matter.

40. For the reasons set forth in the accompanying brief, Germantown seeks a declaration that the Commission has exclusive jurisdiction and power to regulate its operations.

WHEREFORE, Germantown Cab Company, by and through its attorney, Michael S. Henry, Esquire, respectfully asks this Honorable Commission to grant the relief requested herein.

Respectfully submitted,



Michael S. Henry
Attorney for Respondent
Germantown Cab Company