

**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 RECONSIDERATION

Respondent, Germantown Respondent, Germantown Cab Co., by and through its attorney, Michael S. Henry, Esquire, hereby moves this Honorable Commission to reconsider its opinion and order, dated February 14, 2013, the following reasons:

1. Respondent, Germantown Cab Co., is a common carrier that holds a certificate of public convenience issued by the Commission under Docket No. A-00110733, which authorizes it to provide call or demand service in a territory that includes a part of Montgomery County and a part of Philadelphia. The Commission has also authorized Respondent to provide paratransit service on a citywide basis in Philadelphia.
2. The Commission is a Commonwealth agency with statutory responsibility to administer and enforce the Public Utility Code, 66 Pa. C.S. §101, et seq, and regulations it has promulgated pursuant thereto, including regulations pertaining to motor carriers of passengers found in 52 Pa. Code, Chapter 29.
3. The Commission has exclusive jurisdiction over Respondent’s operations.
4. This Motion seeks reconsideration of the Commission’s Opinion and Order dated February 14, 2013, which denies Respondent’s Exceptions to the Initial Decision of the Honorable Cynthia Fordham Williams, Administrative Law Judge (“ALJ”).

5. First and foremost, Respondent seeks reconsideration of the Commission's conclusion that it does NOT have exclusive jurisdiction to regulate Respondent's operations, but rather that the Commission shares jurisdiction with the Philadelphia Parking Authority ("PPA").

6. Respondent seeks reconsideration because the Commission's conclusion on the jurisdictional issue is:

- (a) based on clear errors of fact and law;
- (b) contrary to the intent of the General Assembly as expressed in the applicable statutes;
- (c) contrary to a long line of legislative and administrative history relating to the regulation of taxicab service in Philadelphia generally and to the regulation of Respondent's operating rights in particular;
- (d) violates Respondent's rights under the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania; and,
- (e) absurd, impractical, unreasonable, unduly burdensome, and incapable of compliance.

7. By participating in the establishment of this regulatory scheme with the PPA, the Commission has abdicated its statutory responsibilities under the Public Utility Code and its own regulations, all of which have caused enormous harm to Respondent and, as a consequence to the public.

I. THE COMMISSION MADE CLEARLY ERRONEOUS FINDINGS OF FACT CONCERNING THE NATURE OF RESPONDENT'S OPERATING RIGHTS, WHICH WERE COMPLETELY UNSUPPORTED BY ANY EVIDENCE

8. Specifically, the Commission erred when it found that **"[t]he record demonstrates that the Respondent holds authority from the PPA to provide service in Philadelphia on a non-citywide basis and separate authority from the Commission to provide service in areas outside of Philadelphia."**

9. To begin with, Respondent has only one certificate of public convenience that authorizes it to provide call or demand service and that certificate was issued by the Commission and grants authority to provide such service in a territory that includes part of Philadelphia and part of Montgomery County.

10. The PPA never issued a certificate of public convenience authorizing Respondent to provide call or demand service in a part of Philadelphia and the Commission never issued a certificate of public convenience authorizing Respondent to perform call or demand service solely in a part of Montgomery County nor did the Commission modify, amend, partially revoke or cancel the certificate of public convenience it issued to Respondent.

A. IT WAS CLEARLY ERRONEOUS FOR THE COMMISSON TO FIND THAT RESPONDENT HOLDS AUTHORITY FROM THE PPA BECAUSE THE RECORD DOES NOT CONTAIN ANY EVIDENCE THAT THE PPA EVER ISSUED AN ORDER GRANTING SUCH AUTHORIZATION OR THAT IT EVER ISSUED RESPONDENT A CERTIFICATE OF PUBLIC CONVENIENCE

11. There is **NO EVIDENCE**, **NONE**, in this case that supports the Commission's finding that Respondent holds authority issued by the PPA.

12. It is a fundamental principle of public utility law that approval of the applicable regulatory body, evidenced by a certificate of public convenience, is necessary before an entity may begin to do business as a common carrier. *Hoffman v. Public Service Commission*, 99 Pa. Super. 417 (1930), 1930 Pa. Super. LEXIS 347.

13. The issuance of a certificate of public convenience by a regulatory body such as the Commission or the PPA is a "purely legislative function upon authority delegated to [it] by the Legislature." See *E.A. Gallagher & Sons v. Pennsylvania Public Utility Commission*, 161

Pa. Super 243, 53 A.2d 842 (1947) (cited in *Application of The Apollo Gas Company*, 1988 Pa. PUC LEXIS 416 (Docket No. A-00120450)).

14. The PPA derives its authority to issue certificates of public convenience from its enabling act.

15. The General Assembly has delegated such power to the PPA under Section 5711 of the Parking Authorities Law, 53 Pa. C.S. §5711, which, prior to its amendment by Act 119 of 2012, provided, in pertinent part:

- (a) General Rule. -- In addition to the powers conferred upon the authority by other provisions of this title, the authority is empowered to issue certificates of public convenience in accordance with this subchapter.
- (b) Application. – Every application for a certificate of public convenience shall be made to the authority in writing, be verified by oath or affirmation and be in such form and contain such information as the authority may require.
- (c) Procedure. –
 - (1) A certificate of public convenience to provide taxicab service within cities of the first class **shall be granted by order of the authority** without proof of the need for the service if the authority finds or determines that the applicant is capable of providing dependable taxicab service to the public according to the rules and regulations of the authority.
 - (2) The authority is authorized to issue a maximum of 1,600 certificates of public convenience for taxicab service and no more than five certificates of public convenience for limited service in any cities of the first class.

16. Thus, evidence to support a finding that Respondent holds authority from the PPA to provide service within Philadelphia must consist of an order issued by the PPA granting Respondent that authority or the certificate of public convenience itself.

17. No such order or certificate was introduced into evidence nor could one have been introduced into evidence because no such order or certificate exists.

18. On December 13, 2012, Petitioners, through their attorney, submitted a request to the Authority under the Open Records Law requesting: “Any order issued by the Authority approving, granting, or issuing a certificate of public convenience to any partial rights taxicab company.” A true and correct copy of Petitioner’s request is attached hereto as Exhibit “A.”

19. On January 22, 2013, the Authority responded to Petitioners’ request stating:

On December 13, 2012, you requested documents pertaining to orders issued by the Philadelphia Parking Authority approving, granting or issuing a certificate of Public Convenience to any partial rights taxicab company. The Authority is not in possession of any orders responsive to your request; therefore your request is denied.

A true and correct copy of the PPA’s response to Respondent’s Right to Know Request is attached hereto as Exhibit “B”.

20. Thus, the Commission’s finding that Respondent holds authority from the PPA to provide service in Philadelphia **is not supported by any evidence of record** and cannot form the basis of its opinion that the Commission does not have exclusive jurisdiction over Respondent.

B. IT WAS CLEARLY ERRONEOUS FOR THE COMMISSION TO FIND THAT RESPONDENT HOLDS SEPARATE AUTHORITY FROM THE COMMISSION TO PROVIDE CALL OR DEMAND SERVICE SOLEY IN A PART OF MONTGOMERY COUNTY BECAUSE THE RECORD DOES NOT CONTAIN ANY EVIDENCE THAT THE COMMISSION EVER ISSUED AN ORDER GRANTING SUCH AUTHORIZATION NOR IS THERE ANY EVIDENCE THAT THE COMMISSION MODIFIED, AMENDED, PARTIALLY REVOKED OR CANCELLED RESPONDENT’S ORIGINAL CERTIFICATE, WHICH AUTHORIZES IT TO PROVIDE CALL OR DEMAND SERVICE IN PART OF PHILADELPHIA AND PART OF MONTGOMERY COUNTY

21. Likewise, there is **NO EVIDENCE** of record, **NONE**, in this case that supports the Commission's finding that Respondent holds a separate authority from the Commission to provide service in areas outside of Philadelphia.

22. Once again, evidence that Respondent holds a separate certificate of public convenience authorizing it to provide call or demand service solely in a part of Montgomery County must consist of a Commission order granting such authority.

23. The General Assembly delegated authority to the Commission to issue certificates of public convenience under §1103(c) of the Public Utility Code, 66 Pa. C.S. §1103(c), which uses language that is almost identical to the language the General Assembly used in Section 5711(c) of the Parking Authorities Law, 53 Pa. C.S. §5711(c).

24. Section 1103(c) provides, in pertinent part: "A certificate of public convenience shall be granted **by order of the commission**, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public."

25. As the Commission may easily determine by reviewing its own records, **no such order exists**, and, if there is no order, there is no certificate, and there is no evidence to support the Commission's finding that Respondent possess a certificate of public convenience that authorizes call or demand service solely in a part of Montgomery County.

26. Of course, Respondent possesses a certificate of public convenience, which the Commission issued by order dated September 5, 1996, but that certificate authorizes Respondent to provide call or demand service in **both** a part of Montgomery County and a part of Philadelphia.

27. Thus, the evidence of record **flatly contradicts** the Commission's finding that Respondent possesses a separate certificate of public convenience that authorizes call or demand service solely in a part of Montgomery County.

28. Furthermore, the Commission has never issued any order modifying, amending, partially revoking or cancelling Respondent's original certificate of public convenience to limit Respondent's authorization to provide call or demand service solely to a part of Montgomery County.¹

29. Without such an order or the issuance of such a modified certificate, there is no evidence to support the Commission's finding that Respondent possesses a separate certificate of public convenience that authorizes call or demand service solely in a part of Montgomery County.

II. THE CONCEPT OF JURISDICTION ADOPTED BY BOTH THE COMMISSION AND THE PPA IS CLEARLY ERRONEOUS BECAUSE IT IS CONTRARY TO THE INTENT OF THE GENERAL ASSEMBLY AS INTERPRETED BY THE SUPREME COURT IN BLOUNT V. PHILADELPHIA PARKING AUTHORITY, 965 A. 2d 226 (PA. 2009)

30. The Commission's concept of jurisdiction is clearly erroneous.

31. Jurisdiction is an ambiguous term because it reasonably capable of several meanings.

32. The law recognizes several types of jurisdiction, including personal jurisdiction, subject matter jurisdiction, and territorial jurisdiction.

¹ On July 13, 2007, the Commission issued an order granting Respondent additional territory in Montgomery County under Docket No. A-00110773, F.1, Am-A, and on August 27, 2009, the Commission granted Respondent authorization to provide paratransit service on a citywide basis in Philadelphia under Docket No. A-2009-2097361 and A-00110773. But the original operating territory, which includes part of Philadelphia and part of Montgomery County remains unchanged.

33. The Commission has personal jurisdiction over most, but not all, public utilities operating in this Commonwealth and subject matter jurisdiction over the provision of service by those public utilities. See 66 Pa. C.S. §501(b).

34. Its territorial jurisdiction extends throughout the Commonwealth, as it is a Commonwealth agency with statewide powers. *Id.*

35. When the General Assembly enacted Act 94 of 2004 (“Act 94”), it transferred a part of the Commission’s personal and subject matter jurisdiction to the PPA, another Commonwealth agency, but it did nothing to change the scope of the Commission’s territorial jurisdiction, which remains statewide. See *Blount v. Philadelphia Parking Authority*, 965 A.2d 226 (Pa. 2009).

36. Significantly, Act 94 also conferred statewide jurisdiction on the PPA with regard to its regulation of public utilities. *Id.*

37. In discussing the jurisdiction of the Commission and the PPA, the Supreme Court in *Blount, supra*, stated:

...the PPA shares the responsibility for regulating taxicab operations in the Commonwealth with the PUC. 53 Pa.C.S. § 5722. PUC-licensed taxicabs operate statewide. 66 Pa.C.S. § 2502(a)(1); 53 Pa.C.S. § 5714(d)(1). They may transport persons and property "from any point in a city of the first class to any point in this Commonwealth beyond that city of the first class if the request for service for such transportation is received by call to its radio dispatch service." 53 Pa.C.S. § 5714(d)(1). Like PUC-licensed taxicabs, PPA-licensed taxicabs may also travel to other parts of the Commonwealth and to other states. 53 Pa.C.S. § 5714(c)(2)-(3). The PPA is responsible for the high volume Philadelphia area while the PUC is responsible for the remaining parts of the Commonwealth. 53 Pa.C.S. § 5505(d). The two agencies' spheres of operation combine and overlap to create a system of ground transportation that is essential to the welfare of the Commonwealth "as a whole." 53 Pa.C.S. § 5701.1. The PPA and PUC together regulate the totality of Pennsylvania taxicabs and it is essential that the two entities operate harmoniously.

38. In this passage, which only discusses taxicabs, the Supreme Court makes it clear that both the Commission and the PPA have territorial jurisdiction throughout the entire Commonwealth, each of which combines and overlaps with the other.

39. It is not the case that the PPA has territorial jurisdiction only within Philadelphia and the Commission has territorial jurisdiction only outside of Philadelphia as far as taxicab regulation is concerned.

40. The PPA regulates medallion taxicabs no matter where they operate within the Commonwealth and the Commission regulates PUC-certified taxicabs, even when they operate in Philadelphia.²

41. The Supreme Court's statement that "[t]he PPA is responsible for the high volume Philadelphia area, while the PUC is responsible for the remaining parts of the Commonwealth" does not lead to a contrary conclusion.

42. In making this statement, the Supreme Court is simply observing that the PPA's regulatory activities are concentrated in the Philadelphia area because the PPA has personal and subject matter jurisdiction over medallion taxicab companies with citywide operating rights in Philadelphia and therefore provide most of their service in the Philadelphia area.

43. It is important to note that the Supreme Court's statement refers to the PPA's responsibility in the "high volume Philadelphia area" and not strictly to the territorial boundaries of the City.

² At the hearing in this matter, Commission Enforcement Officers testified that the Commission continues to conduct field inspections of Respondent's taxicabs providing point-to-point call or demand service within Philadelphia, despite the enactment of Act 94. N.T. 67-68. True and correct copies of PUC Field Inspection Reports, which corroborate this fact, are attached hereto as Exhibit C.

44. What distinguishes the two agencies from a jurisdictional standpoint is the personal and subject matter jurisdiction the General Assembly delegated to each agency.

45. Thus, in order to determine whether the Commission has exclusive jurisdiction over Respondent and its operations, the Commission must interpret the specific provisions of Act 94 and the Parking Authorities Law, which transfer specific powers and functions from the Commission to the PPA, to determine whether the General Assembly transferred any powers relating to Respondent and its operations.

III. THE COMMISSION ERRED IN CONCLUDING THAT IT SHARES JURISDICTION OVER RESPONDENT AND ITS OPERATIONS BECAUSE ACT 94 ONLY TRANSFERRED THE COMMISSION'S FUNCTIONS AND POWERS UNDER THE MEDALLION ACT AND WITH REGARD TO THE REGULATION OF LIMOUSINES IN PHILADELPHIA AND DID NOT TRANSFER ANY FUNCTIONS OR POWERS RELATIVE TO RESPONDENT OR ITS OPERATIONS

A. THE COMMISSION FAILED TO CONSIDER THE EXPRESS PROVISIONS OF ACT 94 WHEN IT ERRONEOUSLY DETERMINED THAT ACT 94 TRANSFERRED CERTAIN FUNCTIONS AND POWERS OVER RESPONDENT AND ITS OPERATIONS TO THE PPA

46. It is a well-established principle of administrative law that the powers of an administrative agency are not boundless. *See West Penn Railways Company v. Pennsylvania Public Utility Commission*, 4 A.2d 545 (Pa. Super. 1939).

47. As creatures of statute, administrative agencies may only exercise those powers that have been conferred upon them by the General Assembly in their enabling acts. *See Susquehanna Regional Airport Authority v. Pennsylvania Public Utility Commission*, 911 A.2d 612 (Pa. Cmwlth. 2006).

48. Administrative agencies have no inherent power and may do only those things that the legislature has expressly or by necessary implication placed within their power to do. *Naylor v. Township of Hellam*, 773 A.2d 770, 773-773 (Pa. 2001).

49. An administrative agency “cannot, by mere usage, invest itself with authority or powers not fairly or properly within the legislative grant: it is the law which is to govern rather than departmental opinions in regard to it.” *Commonwealth v. American Ice Company*, 178 A.2d 768, 773 (Pa. 1962) (quoting *Federal Deposit Insurance Corp. v. Board of Finance & Revenue of Commonwealth*, 84 A.2d 495, 499 (Pa. 1951) (emphasis in the original)).

50. The Commission and the PPA are creatures of statute and their powers are, in all cases, statutory. See *Allegheny County Port Authority v. Pennsylvania Public Utility Commission*, 237 A.2d 602 (Pa. 1967).

51. In considering the jurisdiction and powers of the Commission and the PPA the Commission must bear in mind that the source of their powers must either arise from the express words of the enabling acts or by strong and necessary implication therefrom. *Id.*

52. In 2004, The General Assembly enacted Act of July 16, 2004, P.L. 758, No. 94 (as amended 53 Pa.C.S. §§5701-5745) (“Act 94”), which transferred to the Authority certain regulatory functions pertaining to taxi and limousine services, which were formerly performed by the Commission pursuant to the Public Utility Code, 66 Pa.C.S. §§101 et seq.

53. Prior to Act 94, the Commission bore the responsibility for taxicab and limousine regulation throughout the Commonwealth.

54. The Commission regulated taxicabs in Philadelphia pursuant to the Medallion Act, 66 Pa. C.S. Ch. 24 and §§510(b)(5) and 1103(c) (now repealed), and regulations promulgated thereunder, 52 Pa. Code Ch. 30.

55. All other taxicabs and all limousines were regulated under general provisions of the Public Utility Code pertaining to common carriers and regulations promulgated thereunder, 52 Pa. Code Ch. 29.

56. Against this backdrop, the General Assembly enacted Act 94, which supplanted the Medallion Act and transferred the Commission's powers and functions under the Medallion Act and with regard to the regulation of limousines in Philadelphia to the PPA.

B. THE COMMISSION FAILED TO CONSIDER THE LONG LEGISLATIVE AND ADMINISTRATIVE HISTORY OF "GRANDFATHERING" RESPONDENT AND ITS OPERATIONS FROM REGULATION UNDER VARIOUS LEGISLATIVE ENACTMENTS OVER THE YEARS

57. Before considering the question how Act 94 affected the jurisdiction over Respondent and its operations, it is extremely important to note that this is not the first time that questions have arisen with regard to Respondent's rights in the wake of newly enacted legislation.

58. In 1987, the question of the status of Respondent's operating rights arose in the context of a Petition for Declaratory Order filed by Genco Services, Inc. ("Genco"), which sought clarification of the issue whether an application could be filed with the Commission seeking operating authority in a portion of Philadelphia subsequent to the enactment of Act 69 of 1980. *See Application of Genco Services, Inc.*, Petition for Declaratory Order, Docket No. A-00106517. A true and correct copy of the Commission's decision is attached hereto as Exhibit "D."

59. In its petition, Genco asserted that Penn Radio Cab, Inc. (Penn Radio), a predecessor in interest to Respondent, had abandoned its operating territory within Philadelphia and sought to apply for the abandoned territory.

60. But there was a question whether the Commission retained power to issue a certificate authorizing service on less than a citywide basis in Philadelphia, subsequent to the enactment of Act 69 of 1980, which converted every existing certificate of public convenience for taxicab service in Philadelphia, and every certificate issued thereafter, to a “single, sole certificate of public convenience for taxicab service for the operation of one vehicle in such service.”

61. Act 69 of 1980 gave existing certificate holders the right to apply for and automatically receive “the number of individual certificates of public convenience which will correspond to the total number of vehicles permitted to be operated under their respective certificates of public convenience in effect prior to the effective date of [Act 69 of 1980].”

62. At the time, Penn Radio, Respondent’s predecessor in interest, applied for and received 30 taxicab certificates because it held a certificate of public convenience that authorized the operation of 30 taxicabs in citywide service prior to the enactment of Act 69 of 1980.

63. But Penn Radio also held “open-ended rights”, which authorized Penn Radio to provide service in a territory that included an area within Philadelphia (i.e. the same operating rights granted to Respondent by order of the Commission dated June 5, 1996) and the Commission never addressed these operating rights subsequent to the enactment of Act 69 of 1980.

64. In considering the impact of Act 69 of 1980 on these “open-ended” rights, the Commission in Genco stated:

...it appears that Penn Radio continues to hold open ended authority to provide service in Germantown because that authority could not have been revoked without providing Penn Radio all of its due process rights, regardless of the changes in the law. The retention of the rights appears to be similar to the “grandfathering” of rights which occurred under Section 1401 of the old Public Utility Law, 66 P.S. §1531 (repealed). Although the “grandfathering”

of rights was formerly expressly provided for in the Public Utility Law, the underlying doctrine is based on Constitutional requirements. See *Borough of Aspinwall v. Duquesne Light Company*, 40 Pa. P.U.C. 680 (April 29, 1963). Accordingly, Genco's contention that Penn Radio holds rights which authorize service confined to Germantown is correct. However, this finding is not determinative of the ultimate issue before us: whether the Commission may presently issue new Philadelphia taxicab certificates which authorize service in a limited portion of the city. (emphasis added)

65. Ultimately, the Commission concluded that the General Assembly intended to establish a regulatory system that did not authorize the Commission to issue new certificates authorizing service on less than a citywide basis, but the significance of the decision was the Commission's recognition that operating rights cannot be amended, modified, canceled or revoked without due process, which requires notice and an opportunity to be heard.

66. Further, the decision recognizes that existing carriers must be "grandfathered" when legislative changes are enacted to protect their rights under the Constitution.

67. In 1992, after the enactment of the Medallion Act (Act 21 of 1990), a similar issue regarding the status of Respondent's operating rights arose in the context of statutory provisions that required driver certification.

68. On October 30, 1992, the Commission issued a letter to Philly Cab Company ("Philly Cab"), another predecessor in interest to Respondent, directing Philly Cab to bring itself into compliance with the new law, but Philly Cab refused to comply based on its good faith belief that it was "grandfathered" from regulation under the Medallion Act. A true and correct copy of the letter is attached hereto as Exhibit "E".

69. After an uncertified driver of a Philly Cab was stopped by the Philadelphia Police Department, the Commission instituted an enforcement action under Docket No. A-00107245M9506, G-29, to enforce its regulations requiring driver certification, which Philly Cab defended on the grounds that it was "grandfathered" from regulation under the Medallion Act.

70. At the same time that this enforcement action was pending, the Commission was considering whether the Medallion Act permitted the transfer of Philly Cab's operating authority to Penn Cab Co., ("Penn Cab") in an application proceeding under Docket No. A-00110733.

71. The ALJ delayed ruling on the complaint regarding the driver certification issue in *Philly Cab* until a ruling was issued in the *Application of Penn Cab*³ (attached as Exhibit "F") and, when the Commission adopted the ALJ's Initial Decision, which found that the transfer of Philly Cab's operating rights were "grandfathered" from regulation under the Medallion Act, the ALJ found that Philly Cab was likewise "grandfathered" from regulation under the Medallion Act and that there was no legal requirement for Philly Cab to have its drivers certified. A true and correct copy of the decision in that case is attached hereto as Exhibit "G."

72. A similar finding was made 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).

73. On January 27, 2000, Alexa Cab Co., filed an application with the Commission under Docket No. A-00116054F0005 for authorization to provide call or demand service in Respondent's territory, which was then held by Penn Cab Company ("Penn Cab").

74. In denying the application, the Commission once again found that the Medallion Act prohibits the granting of new rights within Philadelphia, but that "grandfathered" carriers could transfer existing rights to provide call or demand service in territories that include part of

³ It is critically important for the Commission to review the voluminous Exhibit F attached hereto, which contains important elements of the Application of Penn Cab Company, including the Final Order of the Commission, the amended Final Order, the Commission's Main Brief and Transcript of Hearing. These documents contain a detailed history of Respondent's operating rights, the value Respondent's service to the public, the Commission's position regarding the grandfathering of Respondent's operating rights under the Medallion Act and the non-applicability of various provisions of the Medallion Act, including the partition and driver certification requirements.

Philadelphia because they were not subject to regulation under the Medallion Act. A true and correct copy of the Commission's Opinion and Order in Application of Alexa Cab Co., Docket No. A-00116054F0005, is attached hereto and marked as Exhibit "H".

75. In *Application of Dee Dee Cab Company*, Docket No. A-00116499, the Commission denied the application of an existing carrier for expanded authority within Philadelphia for similar reasons, finding that, even though existing authorization was "grandfathered" from regulation under the Medallion Act, new authorization was not.

76. In *Dee Dee Cab Company v. Pennsylvania Public Utility Commission*, 817 A.2d 593 (Cmnwlth. Ct. 2003), the Commonwealth Court upheld this view, recognizing that "the Medallion Act and the PUC's regulations do not represent the totality of laws applicable to taxicabs operating in Philadelphia."

77. The Court noted that "[t]here remain operating in the city some number of taxicabs that are authorized to operate only in parts of the city and whose parent companies are not included in the medallion system."

78. The Court found it obvious that "the authorizations for these companies to continue operating in Philadelphia on a less-than-citywide basis were "grandfathered" into the new regulatory scheme, but held that "that allowance, whatever its basis, does not support the proposition that the Medallion Act allows further expansion of less-than-citywide authority for non-medallion taxicab companies."

79. The Court found support for its interpretation of the Medallion Act in Section 3 of the Act that adopted the Medallion Act, Act of April 4, 1990, P.L. 93, which provided in part that its passage "does not affect any act done, liability incurred or right accrued or vested."

80. The underlying theme in all of the above proceedings, many of which involve the very operating rights at issue in this case, is that operating rights, once granted, possess a fundamental continuity that cannot be altered by subsequent legislation without affording due process to the affected party or providing the affected party with just compensation.

81. The Commission must presume that the General Assembly enacted Act 94 with the knowledge of the foregoing history.

C. IN LIGHT OF THE FOREGOING HISTORY, THE COMMISSION FAILED TO CONSIDER THE ABSENCE OF EXPLICIT LANGUAGE IN ACT 94 TRANSFERRING ITS POWERS AND FUNCTIONS RELATIVE TO RESPONDENT AND ITS OPERATIONS TO THE PPA

82. 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 (1960).

83. When the General Assembly does not expressly alter prior law, it may be presumed that it did not intend to change it. *Id.*

84. 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. *Id.*

85. As noted, Act 94 supplanted the Medallion Act.

86. As the Commission and our courts have recognized, the Medallion Act did not apply to suburban motor carriers with call or demand rights in territories that included parts of Philadelphia. *See, Genco, supra* and *Dee Dee Cab, supra*.

87. 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 in *Dee-Dee Cab, supra*, when it enacted Act 94.

88. If the General Assembly had intended to confer powers on the Authority relative to motor carriers such as Respondent, thereby broadening the powers conferred on the Commission under the Medallion Act, it would have made its intent explicit in the Authority's enabling act, but it did not do so.

D. THE COMMISSION FAILED TO CONSIDER THAT THE EXPLICIT TRANSFER RELATED PROVISIONS OF ACT 94 DO NOT TRANSFER ANY FUNCTIONS OR POWERS TO THE PPA RELATING TO RESPONDENT OR ITS OPERATIONS AND ITS CONCLUSION IS CONTRARY TO THE SUPREME COURT'S INTERPRETATION OF THOSE PROVISIONS IN THE GERMANTOWN CAB CASE

89. The General Assembly provided for the transfer of certain functions and powers of the Commission in Section 22(1) of Act 94.

90. 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)

91. Clearly, the General Assembly intended to transfer to the Authority only those powers relative to taxicab service in Philadelphia that the Commission had exercised under the Medallion Act, which, as noted, did not include powers over motor carriers such as Respondent.

92. Had the General Assembly intended to transfer the Commission's powers relative to motor carriers such as Respondent, it would have included a provision similar to the one

relating to limousine service in Philadelphia that referred explicitly to motor carriers such as Petitioner, but no such provision exists.

93. 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.

94. 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, such as Respondent.

95. The absence of such a provision provides clear evidence that the General Assembly did not intend to confer powers on the Authority relative to taxicab service in Philadelphia beyond those it had previously conferred on the Commission under the Medallion Act.

96. In *Germantown Cab Company v. Philadelphia Parking Authority*, 36 A.3d 105 (Pa. 2012), the Supreme Court discussed these transfer related provision of Act 94 noting that the General Assembly uses “plain language” to make it “clear” that Act 94 transfers the PUC’s powers under the Medallion Act and with regard to the regulation of limousines in cities of the first class, but not with regard to the regulation of partial rights taxicabs, such as Respondent.

97. The Supreme Court analyzed the “explicit transfer-related provisions” of Act 94 to reject the Authority’s argument that “nothing [in Act 94] indicates that Section 22(2) [of Act 94] was intended to continue the validity of the PUC’s regulations, orders, programs and policies after the transfer of regulatory oversight and the corresponding repeal of the PUC’s statutory authorization under the Medallion Act.”

98. In footnote 19, the Supreme Court states:

The Authority's argument along this line are difficult to follow, as they depart from the plain language used by the Legislature precisely to prevent the regulatory void the Authority insists would occur absent localized rulemaking procedures. **Indeed, the statutory provision immediately preceding Section 22(2) makes clear that the Legislature intended to shift the PUC's regulatory powers to the Authority for its prospective use in regulating taxicabs and limousines. See Act 94 §22(1) ("The [PUC's]... powers, duties, contracts, rights and obligations which are utilized or accrue in connection with the functions under [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. Section 22(1) dovetails with Section 22(2)'s extension of the validity of the PUC regulations, orders, programs, and policies indefinitely into the Authority's tenure. In light of these explicit transfer-related provisions, it is difficult to afford any credence to the PPA's repeated refrain that it "was not explicitly empowered to enforce any of the PUC's regulations[,] orders, programs and policies or the Public Utility Code itself." Brief for the PPA at 39.

(underlined emphasis in the original) (bold emphasis added)

99. As the Supreme Court makes clear in the foregoing passage, every reference in Act 94's "explicit transfer-related provisions" describes the powers being transferred from the PUC to the Authority in clear and unambiguous language.

100. Act 94 simply contains no similarly explicit provision regarding the transfer of the PUC's relating to the regulation of such carriers.

101. As the Supreme Court notes, the General Assembly "took pains to assure that the PUC's rules and regulations [under the Medallion Act and with regard to the regulation of limousines in cities of the first class] remained extant until the Authority provided differently, apparently contemplating that the Authority would do so in an orderly and lawful fashion." Germantown, supra at 120.

102. It did not take such pains with regard to the PUC's rules and regulations with regard to partial rights taxicab companies, such as Respondent.

103. The Supreme Court chastised the PPA for its tortured interpretation of the clear and unambiguous language of Act 94’s “transfer-related provisions.”

104. In the present case, the Commission is guilty of the same sin.

E. THE COMMISSION MISCONSTRUED SECTION 5714(D)(2) OF THE PARKING AUTHORITIES LAW BY FAILING TO RECOGNIZE IT AS THE CODIFICATION OF ITS OWN POSITION WITH REGARD TO “GRANDFATHERING” OF RESPONDENT AND ITS OPERATIONS FROM REGULATION UNDER THE MEDALLION ACT

105. Section 5714(d)(2) is a “grandfathering” provision, which exempts Resondent and its operations from regulation under Act 94.

106. Such a provision was omitted from Section 2404 of the Medallion Act. *See Genco, supra.*

107. The purpose of this provision was to clarify and codify the holdings in *Genco, supra*, and *Dee-Dee Cab, supra*, which had found the “grandfathering” of such carriers to have been implicit in the Medallion Act.

108. Prior to its amendment under Act 119 of 2012, Section 5714(d)(2) of the Parking Authorities Law provided that “carriers currently authorized to provide service to designated areas within [Philadelphia] on a non- citywide basis shall retain their authorization through the Authority.”

109. This provision is a typical “grandfather” clause and was not intended to confer regulatory powers on the Authority relative to such carriers, which would have represented a clear departure from prior law.

110. Had the General Assembly intended such a fundamental change in the regulatory scheme established by the Medallion Act, it would have used an express provision to delineate it.

111. 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 regulatory scheme established by the Medallion Act from medallion taxicabs only.

F. THE COMMISSION ERRED IN CONCLUDING THAT RESPONDENT WAS NOT GRANDFATHERED FROM REGULATION UNDER ACT 94 BECAUSE THE COMMISSION FAILED TO CONSIDER THE RULES OF STATUTORY CONSTRUCTION, WHICH PROVIDE THAT WHEN STATUTES ARE REPEALED AND SUBSTANTIALLY REENACTED, THEY SHOULD BE CONSTRUED THE SAME WAY AS THE EARLIER STATUTE

112. The Statutory Construction Act, 1 Pa.C.S. Ch. 19, provides further support for Respondent's argument that the General Assembly did not intend to confer regulatory powers on the Authority relative to motor carriers such as Respondent.

113. 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.

114. 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.

115. 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 and not to motor carriers, such as Respondent, who were not subject to the provisions of the supplanted Medallion Act.

G. THE COMMISSION ERRED IN FAILING TO CONSIDER THAT THE GENERAL ASSEMBLY WOULD HAVE INCLUDED A SEAT ON THE PPA'S ADVISORY COMMITTEE FOR CARRIERS LIKE RESPONDENT IF IT HAD INTENDED TO CONFER REGULATORY POWERS AND FUNCTIONS RELATIVE TO RESPONDENT AND ITS OPERATIONS ON THE PPA

116. Other provisions of Chapter 57 of the Parking Authorities Law provide further evidence of legislative intent with regard to the Authority's power over motor carriers such as Petitioner.

117. 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.

118. 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.

119. 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.

120. The omission of a mandatory seat on the advisory board for motor carriers such as Respondent indicates that the General Assembly did not intend the Authority to exercise regulatory power over carriers such as Respondent.

121. Clearly, the General Assembly had the due process rights of the regulated community in mind when it established the Advisory Committee.

122. The Advisory Committee is designed to provide the regulated community with a meaningful opportunity to participate in rulemaking and the regulatory process.

123. The Authority has argued before the Supreme Court that participation by the Advisory Committee in the regulatory rulemaking process is mandatory.

124. Thus, the exclusion of carriers such as Respondent on the Advisory Committee would raise concerns about the constitutionality of the statute if, as the Authority has concluded in the present case, it has power over such carriers.

125. Section 1922(3) of the Statutory Construction Act, 1 Pa.C.S. §1922(3), requires the presumption that the General Assembly did not intend to violate the Constitution of the United States or this Commonwealth when it enacts legislation.

126. Had the General Assembly intended the Authority to exercise power over carriers such as Respondent, it would have provided representation for these carriers on the Advisory Committee for this reason.

H. THE COMMISSION ERRED IN FAILING TO CONSIDER THE ABSENCE OF PROVISIONS FOR THE ALLOCATION OF REGULATORY EXPENSES AMONG MEDALLION TAXICABS AND CARRIERS SUCH AS RESPONDENT

127. Respondent asserts that the statutory provisions relating to the allocation of regulatory expenses provide further support for its claim that the Authority does not have any jurisdiction or power over it.

128. Prior to the enactment of Act 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, 66 Pa.C.S. §510 (pertaining to assessment for regulatory expenses upon public utilities). See 66 Pa.C.S. §510(b)(5) (now repealed).

129. 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.

130. 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.

131. 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.

132. Medallion taxicabs 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.

133. 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.

134. 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.

135. 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.

136. 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.

137. 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.

138. 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.

139. Accordingly, any assessment methodology that does not take revenues into account, rather than the number of vehicles being operated cannot be equitable.

140. 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.

141. 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.

I. THE COMMISSION FAILED TO CONSIDER THAT ITS INTERPRETATION OF ACT 94 WOULD LEAD TO THE ABSURD RESULT OF DUAL REGULATION WHERE RESPONDENT WOULD BE REQUIRED TO COMPLY WITH TWO SETS OF OFTEN CONFLICTING REGULATIONS THAT ARE UNREASONABLE, INCAPABLE OF COMPLIANCE, AND UNDULY BURDENSOME

142. 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.

143. 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.

144. 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.

145. When the Commission transferred its power to the Authority pursuant to Act 94, the Commission stopped administering and enforcing regulations pertaining to medallion taxicabs and continued to administer and enforce regulations pertaining to motor carriers such as Respondent, with call or demand rights in the Philadelphia suburbs and in small portions of Philadelphia.

146. The Commission routinely inspects the vehicles, meters, and equipment of carriers such as 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 carriers such as 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.

147. In addition, the Commission requires motor carriers such as Respondent to file annual reports and allocates its regulatory expenses to them, as it does with all other public utilities within its jurisdiction, through an annual assessment.

148. Such carriers have paid and continue to pay assessments to the Commission.

149. Although the Authority believes that motor carriers such as Respondent are subject to the same regulatory burden it imposes on medallion taxicabs, it does not believe that such carriers should share in the benefits of its regulatory scheme.

150. For example, 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 motor carriers such as Respondent from participation in the initiative.

J. THE COMMISSION ERRED IN FAILING TO CONSIDER THE FALSE PREMISES UPON WHICH THE JURISDICTIONAL AGREEMENT BETWEEN THE COMMISSION AND THE PPA IS BASED AND THAT THE COMMISSION CONTINUES TO REGULATE RESPONDENT AND ITS OPERATIONS CONTRARY TO THE TERMS OF THE JURISDICTIONAL AGREEMENT

151. In addition to the statutory provisions described above, Respondent also needs to address the Jurisdictional Agreement between the Authority and the Commission.

152. 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”).

153. On March 12, 2005, the Commission published the Jurisdictional Agreement in the Pennsylvania Bulletin.

154. 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.

155. 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.

156. As a preliminary matter, Section 2 is based on a false premise, namely, that Section 11 of Act 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.

157. Section 11 of Act 94 is the provision enacting Section 5714 of the Parking Authorities Law, 53 Pa.C.S. §5714.

158. As noted above, Section 5714(d)(2) is merely a “grandfathering” clause that provides for the continued operation of carriers such as Petitioner subsequent to the passage of Act 94.

159. It does not empower the Authority to exercise regulatory powers over carriers such as Petitioner.

160. In addition, Section 2 of the Jurisdictional Agreement is contrary to Section 22(4) of Act 94, because it does not pertain to a jurisdictional issue associated with the transfer of the Commission’s functions under the Medallion Act or in connection with limousine regulation in Philadelphia.

161. 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.

162. 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.

163. Act 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 20041-94 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.

164. Accordingly, the Commission and the Authority exceeded their statutory powers under Section 22(4) of Act 2004-94.

165. Section 2 of the Jurisdictional Agreement is also contrary to Chapter 11 of the Public Utility Code, 66 Pa.C.S. Ch. 11, which pertains to the Commission's issuance of certificates of public convenience.

166. 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.

167. 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.

168. 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.

169. Section 2 of the Jurisdictional Agreement is contrary to Chapter 11 of the Public Utility Code because it bifurcates the operating territories of carriers such as Petitioner into a Philadelphia territory and a non-Philadelphia territory.

170. 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.

171. Lastly, despite the existence of the Jurisdictional Agreement, the Commission continues to administer and enforce its regulations against Respondent and its operations in Philadelphia.

172. In fact, the inspections which form the basis for the complaint in this case were performed in Philadelphia, where the Commission asserts it has no jurisdiction.

173. If the Commission’s position is correct, then the Commission should dismiss the Complaint in its entirety because the Commission Enforcement Officers were acting outside of their jurisdiction.

K. THE COMMISSION ERRED IN FAILING TO CONSIDER THAT THE COMMONWEALTH COURT ONLY REFERS TO RESPONDENT AS A PUC-CERTIFIED CARRIER IN CASES INVOLVING ACT 94

174. In *Sawink, Inc., et al v. Philadelphia Parking Authority*, 2012 Pa. Commw. LEXIS 4, the Commonwealth Court addressed the Authority’s power to impound taxicabs operated by Commission-certified carriers, such as Respondent.

175. 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 Respondent’s status as a Commission certified entity, not as an Authority-certified entity.

176. Similarly in *MCT Transportation, Inc. v. Philadelphia Parking Authority*, __ A.3d __ (February 14, 2013), the Commonwealth Court, once again, recites the **FACT** that Respondent “holds a certificate of public convenience issued by the Pennsylvania Public Utility Commission that authorize[s] [it] to provide call or demand service in certain designated areas of Philadelphia and its suburbs.” See n.2.

K. THE COMMISSION ERRED IN CONSIDER THE IMPACT ITS INTERPRETATION HAS ON THE REGULATION OF RESPONDENT AND ITS OPERATION WITH REGARD TO RATES

177. Many of the violations at issue in this case involve metered rates.

178. Under the absurd regulatory scheme adopted by the Commission, Respondent is required to place rates on its meters imposed upon it by the PPA, which are not contained in Respondent's tariff on file with the Commission.

179. Under this absurd regulatory scheme, Respondent is required to charge the public rates that have not been determined to be just and reasonable by the Commission, which violates basic principles of public utility law.

180. 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 be calculated and registered in accordance with the current tariff rates on file with and approved by the Commission.

181. 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.

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

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

184. 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.

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

186. 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.

187. 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.

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

189. 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.

190. 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.

191. 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.

192. 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.

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

194. 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.

195. 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.

196. 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. See Exhibit

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

199. 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.

WHEREFORE, Germantown Cab Company, by and through its attorney, Michael S. Henry, Esquire, respectfully asks this Honorable Commission to reconsider its Opinion and Order of February 14, 2013.

Respectfully submitted,

Michael S. Henry

Michael S. Henry
Attorney for Respondent
Germantown Cab Company

CERTIFICATE OF SERVICE

I, Michael S. Henry, Esquire, hereby certified that I have served a copy of Respondent's Motion for Reconsideration upon the following via first class mail, postage prepaid:

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3/1/2013

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