

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120**

**Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement
v.
Best Taxi, LLC, and Good Cab, LLC**

**Public Meeting held September 25, 2025
OSA-3029070
Docket No. C-2022-3029070**

STATEMENT OF VICE CHAIR KIMBERLY BARROW

Before the Commission is a complaint by the Bureau of Investigation and Enforcement against Best Taxi, LLC, and Good Cab, LLC. Most of the complaint is undisputed, however Best Taxi and Good Cab (collectively Best Taxi, for convenience) challenge the facial validity of 52 Pa. Code § 29.505(b)(1)(i)(D) (the Regulation), which requires a motor carrier to disqualify any applicant for employment if the applicant was convicted of violating Pennsylvania’s Controlled Substance, Drug, Device and Cosmetic Act within the preceding seven years.

Standing

Best Taxi argues that the Regulation is invalid because it conflicts with Article I, Section I of the Pennsylvania Constitution, as well as the Pennsylvania Criminal History Record Information Act, specifically 18 Pa.C.S. § 9125(b).

The Initial Decision determines that Best Taxi is prohibited from its challenge because it lacks standing to assert the rights of drivers. The Initial Decision is correct that “one ordinarily has no standing to vindicate the constitutional rights of third persons.” *Philadelphia Facilities Mgmt. Corp. v. Biester*, 431 A.2d 1123, 1131 (Pa. Cmwlth. 1981). A litigant may overcome the third-party standing doctrine by showing “(1) the relationship of the litigant to the third party is such that enjoyment of the right by the third party is inextricably bound up with the activity the litigant seeks to pursue; and (2) there is some obstacle to the third party's assertion of his own right.” *Id.*

Best Taxi argues Article I, Section I prohibits the summary rejection for “employment on the ground that the individual has a prior criminal record unless in doing so the employer is furthering a legitimate public objective.” Brief at 5-6, citing *El v. Se. Pennsylvania Transp. Auth.*, 297 F.Supp.2d 758, 761 (E.D. Pa. 2003). I agree that this ground invokes the rights of a third party, and therefore Best Taxi must meet the standard for third-party standing. They do not. When asserting standing, at the summary judgment stage of the proceeding or beyond, “the plaintiff can no longer rest on such mere allegations but must set forth by affidavit or other evidence specific facts, which for the purpose of summary judgment will be taken as true.” *Muth v. Dep't of Env't Prot.*, 315 A.3d 185, 196 (Pa. Cmwlth. 2024). After reviewing the hearing transcript and stipulated facts, I do not believe Best Taxi has put forward evidence to show third-party standing.

However, Best Taxi satisfies the conditions for standing with respect to the potential conflict between the Criminal History Record Information Act and the Regulation because the Regulation as well as 18 Pa.C.S. § 9125(b) are not directed at the employee, but the employer. The Regulation requires that the carrier disqualify applicants if they have a predicate conviction. The Regulation is not targeted at the employees whatsoever. Likewise, 18 Pa.C.S. § 9125(b) prohibits *an employer* from considering an applicant's suitability for employment in the position at issue. For this challenge, Best Taxi is asserting its own standing, not the applicant's.

Raising Constitutional Challenges to Regulations

The Initial Decision also determines that the Bureau of Investigation and Enforcement (Bureau) is not the proper party to defend the Commission's regulations against a charge of unconstitutionality. This is a mistake of law.

The Initial Decision reasons, based on *Tate v. Columbia Gas of Pennsylvania*, Docket No. C-2020-3018966 (Opinion and Order entered Oct. 10, 2024) that the Commission, instead of any other party, is the appropriate entity to defend the constitutionality of its regulations. However, the reliance on *Tate* is misplaced. In *Tate* a consumer brought a complaint against Columbia Gas for unreasonable service even though Columbia Gas was applying the law in effect. The Commission properly ruled that this was not a cognizable claim. It cannot be unreasonable service for a utility to follow Commission regulations, even if those regulations are wrong. The proper avenue is to challenge the regulations directly through a petition to the Commission.

The case here is not the same. No claim is being brought against a utility for unreasonable service for following the Commission's regulations. Instead, the Bureau of Investigation and Enforcement as an arm of the Commission is enforcing regulations against a utility and seeking a fine as a result. The Initial Decision reasons that because the Bureau is an arm of the Commission and not the Commission itself, it cannot defend the constitutionality of regulations. This is incorrect for two reasons.

First, in the context of a regulatory prosecution, the result of the Initial Decision would totally prohibit raising the validity of regulations as a defense. Contrary to that result, "agencies have authority to consider the validity of their regulations" including constitutional validity. *Lehman v. Pennsylvania State Police*, 839 A.2d 265, 275 (Pa. 2003).¹ The defense was therefore appropriately raised, and it should be evaluated.

Second, the Initial Decision misunderstands the relationship between the Bureau and the Commission. The independence of the Bureau is necessitated by the result of *Lyness v. Com., State Bd. of Med.*, 605 A.2d 1204, 1204 (Pa. 1992). *Lyness* concluded quite simply that the same

¹ See also *Delaware Valley Apartment House Owner's Ass'n v. Com., Dep't of Revenue*, 389 A.2d 234, 237 (Pa. Cmwlth. 1978) ("[A]dministrative agencies have the authority to determine the validity and constitutionality of their regulations"); *Pennsylvania Ass'n of Rehab. Facilities v. Foster*, 608 A.2d 613, 616 (Pa. Cmwlth. 1992) ("Administrative agencies have ancillary jurisdiction to rule on the validity of their own regulations in actions before them challenging the application or enforcement of the allegedly invalid regulation.")

entity could not initiate and prosecute and at the same time be the ultimate judge in an administrative prosecution. *Id.* As a result, the Commission first created separation between its prosecutors and adjudicators, and then later the Bureau was created as part of Commission reorganization due to Act 129 of 2008. The effect of *Lyness* is to make Commission prosecutions much more like prosecutions within the Courts of Common Pleas, with a separation between the judge and prosecutor. Further analogizing to trial courts, prosecutors routinely defend the constitutionality of criminal statutes. So too may the Bureau defend the constitutionality of the regulations which it enforces.²

September 25, 2025



Kimberly Barrow, Vice Chair

² Although the Bureau may defend the constitutionality of commission regulations it enforces, it need not generally defend the constitutionality to challenges against the Public Utility Code itself, because the Commission cannot invalidate their own enabling statutes. The agency must still evaluate “as applied” challenges to the constitutionality of a statute. *Lehman*, 839 A.2d at 274.