



**COOPER LAW PLLC**  
**THE LAW FIRM OF SEAN M. COOPER**  
PO BOX 312 ELIZABETHTOWN PA 17022

September 27, 2016

Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
PO BOX 3265  
Harrisburg, PA 17105-3265

Re: Temporary Rulemaking for the Taxi and Limousine Industries;  
Docket No. L-2016-2556432

Dear Secretary Chiavetta,

Please find enclosed with this cover letter the Comments of the Greater Pennsylvania Taxicab Association regarding the Temporary Rulemaking for the Taxi and Limousine Industries, promulgated at the docket number listed above. The comments were e-filed on this date.

If you have any questions, please feel free to contact me.

Sincerely,

Sean M. Cooper  
Attorney at Law/Owner

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Temporary Rulemaking for the : Docket No.  
Taxi and Limousine Industries : L-2016-2556432

**Comments of the Greater Pennsylvania Taxicab Association**

The Greater Pennsylvania Taxicab Association, on behalf of its members (“Commentators”), by and through the undersigned attorney, presents the following comments regarding the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Temporary Rulemaking Order for the Taxi and Limousine Industries.

**I. Background and Procedural History**

On August 27, 2016, the PUC entered an Advance Notice of Temporary Rulemaking Order (the “Order”) announcing the Commission’s intent to promulgate temporary regulations governing the taxicab and limousine industries in order to comply with Act 85 of 2016<sup>1</sup>. The Order solicited comments, which were to be submitted within thirty (30) days of the publication of the Order in the Pennsylvania Bulletin. Publication occurred on Saturday, August 27, 2016, in Volume 46, No. 35, Page 5538 of the Pennsylvania Bulletin. In the Order, the Commission indicated its desire to update regulatory requirements so that they better reflect changes in technology, customer demand and expectations, and competitive challenges. These comments are submitted in response to the Order.

**II. Proposed Changes**

These proposals generally apply to the taxi industry and are submitted in response to Paragraphs II, V, and VI of the Order. Commentators applaud the Commission’s efforts and hope that the resulting temporary regulations reflect the industry’s need for greater flexibility in a number of areas in order to compete in the current market. To that end, Commentators present the following proposals:

---

<sup>1</sup> *Temporary Rulemaking for the Taxi and Limousine Industries*. Docket No. L-2016-2556432.

**1. Owner-Operator Taxi Service: Eliminate restrictions that prohibit a certificated entity from relying on vehicles owned by the employees and contractors who drive for the entity.**

Under the current regulatory scheme, vehicles must be owned by or leased by the certificate-holder<sup>2</sup>. In the case of call or demand carriers, a certificate-holder cannot be given custody, possession, or use of a vehicle owned or leased by an employee-driver or a nominee<sup>3</sup>. In the most recent amendment of § 29.101, the Commission explained that the section was intended to ensure that certificate holders maintain “control over the service provided under [their] authority.”<sup>4</sup>

Commentators presume that the ultimate purpose of this restriction is to ensure that the Commission has a specific party that can be held responsible for the vehicles providing taxi services. This presumption is in line with the Commission’s mission to ensure safe, reliable, and reasonably priced taxi and limousine service throughout the Commonwealth<sup>5</sup>. Commentators believe that the public would be better served by allowing certificated entities to utilize the vehicles and services of owner-operators.

In the experience of the Commentators, Drivers who do not own their vehicles are less likely to operate the vehicle in a responsible manner. The well-known tragedy of the commons illustrates that lack of private ownership decreases the level of care taken to conserve resources. To complete the analogy, drivers who do not own their vehicles have less of an incentive to safeguard the vehicles they drive. Driver indifference directly impacts the safety of passengers and the property of others in the community.

The current system provides no incentive for the drivers to ensure that the vehicles in use are within regulatory guidelines. When a vehicle must be taken out of service, the driver merely waits for another. If the drivers are allowed to own the cars, they have a greater interest in ensuring that the vehicle is within regulations, because the drivers will rely on their personal vehicle to make an income. A driver is more likely to assist a certificated entity get a car back on the road when they have an ownership interest in the vehicle.

Additionally, this change will shift costs and allow certificated entities to develop more competitive pricing. By easing restrictions on owner-operators, the Commission will give certificated entities greater flexibility when developing employee and independent contractor agreements with drivers. This flexibility allows drivers and certificated entities to share the costs of operation and encourages competition, ultimately lowering costs for passengers.

---

<sup>2</sup> 52 Pa. Code § 29.101(a)(5).

<sup>3</sup> 52 Pa. Code § 29.101(f)(1).

<sup>4</sup> 36 Pa. Bull. 4181.

<sup>5</sup> *PUC Mission Statement*. Available at [http://www.puc.state.pa.us/about\\_puc.aspx](http://www.puc.state.pa.us/about_puc.aspx).

As a number of experimental carriers have shown, it is possible for the Commission to ensure an appropriate level of responsibility and control without requiring certificate-holders to own the vehicles being used to provide their services. The level of responsibility need not be any different than that required now when dealing with drivers who lease the vehicles from the certificated entity.

Commentators propose that insurance, maintenance, and service/inspection requirements remain the same with respect to vehicles owned by the operators. Further, drivers who no longer provide driver services would be required to remove all required equipment and marking from the vehicles, while the certificated entity would be required to terminate insurance provided to the driver. Owner-operators who fail to follow current regulations or to meet all requirements as set forth by the certificated entity would be terminated or otherwise unable to operate under the certificated entity's authority. Ultimately, certificated entities will remain responsible for the vehicles that operate under their banner. However, the primary difference is that drivers will have greater incentive to take responsibility for the vehicle, and as necessary some responsibilities can safely be shifted from certificated entity to the owner operator.

**2. Taxi Tariffs and Flexible Rates: Allow carriers operating in multiple counties to set rates per county without utilizing “straw man” entities to encourage price competition and to allow carriers to better meet consumer expectations.**

In November of 2015, the Commission adopted a proposed rulemaking order (the “November 2015 Order”) that would eliminate territorial restrictions that accompany a carrier’s certificate<sup>6</sup>. In doing so, the Commission signaled its desire to move away from monopoly environments in favor of more competitive market pricing for taxi services. Allowing greater flexibility in pricing will give certificated entities the necessary tools to compete in a competitive market.

Commentators believe that the Commission’s temporary regulations should provide carriers with greater flexibility in setting rates in order to allow greater competition in the market. More specifically, the current structure does not allow call or demand carriers who are authorized to operate in multiple counties (“multi-county carriers”) to set differing rates in each county based on point of origin. In at least one prior instance, a Commentator who is authorized to operate in Berks and Lancaster counties has attempted to submit a tariff that contained different rates based on the point of origin.

---

<sup>6</sup> *Proposed Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29 to Reduce Barriers to Entry for Passenger Motor Carriers and to Eliminate Unnecessary Regulations Governing Temporary and Emergency Temporary Authority.* Docket No. L-2015-2507592.

The Commission rejected the proposed tariff because the PUC viewed the tariff as discriminatory<sup>7</sup>.

However, per-county rates are not discriminatory and merely reflect that a carrier's rates are dictated by the market in which the services are provided. As the PUC is undoubtedly aware, Pennsylvania has a great degree of variation in socioeconomic status and population density from county to county. Some counties are largely rural areas, while others are mostly urban or suburban. Consumers are already accustomed to paying different prices for the same goods and services (e.g. restaurant or gasoline prices) based on location due to these factors.

As stated previously, a carrier's ability to set rates is dictated by the market. While consumers in Lancaster County may be accustomed to paying higher costs for goods and services, those in Berks County may not be. A carrier's rates must reflect these perceptions or the carrier will not be able to maintain services to the county in question. Carriers who are authorized to operate only in one county ("single-county carriers") have the ability to ensure that their rates match the customer perception in that county. Unlike their single-county competitors, multi-county carriers are unfairly penalized for operating in multiple counties because they cannot respond to differences in customer perception. Multi-county carriers must follow a "one-size-fits-all" approach or else they risk having their tariffs rejected as discriminatory. The result is that rates are currently too high in some counties and too low in others. Customers will inevitably reject rates that do not fall in line with their perceived value of the services rendered, regardless of whether the service is too expensive or because the service is seen in a negative light because its rate is too low (i.e. the "cheap" option must have some fault).

A final problem is that the current rules allow a service provider to theoretically develop separate certificated entities for each county. This "straw man" approach would allow each entity to set rates based on point of origin. However, multi-county carriers should not be required to build straw men entities in order to fairly compete with their single-county competitors. Ultimately, this behavior increases the cost of business and with it, the rates for taxi services.

---

<sup>7</sup> See 66 Pa. C.S. 1304.

### III. Conclusion

Commentators applaud the Commission's decision to update the current regulatory structure for the taxi and limousine industries. Commentators believe that greater flexibility for certificated entities will help the PUC ensure that taxi and limousine services are not only safe and efficient but also affordable for consumers and profitable for the providers

Date: 9/27/2016

Respectfully submitted,



Sean M. Cooper, Esq.

ID# 320940

620 South 13<sup>th</sup> Street

Harrisburg PA 17104

717.559.5291

Sean@cooperlawpa.com