

Comments of the Independent Regulatory Review Commission



Philadelphia Parking Authority Regulation #126-4 (IRRC #2993)

Taxicab and Limousine Amendments

May 29, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the March 30, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Philadelphia Parking Authority (PPA or Authority) to respond to all comments received from us or any other source.

1. Section 1015.2. Certificate required. – Statutory authority; Clarity.

PPA proposes to add Subsections (c) and (d) “to clarify the rights and limitations of partial-rights taxicabs.” PPA also states that these provisions “are consistent with the long established limitations of partial-rights taxicabs in Philadelphia.” PPA does not provide its statutory authority for clarifying these limitations.

Further, Subsections (c) and (d) restrict the service of partial-rights taxicabs based on the geographical boundaries identified in the partial-rights taxicab certificate holder’s PPA-approved tariff. A partial-rights taxicab company, Germantown Cab Company (Germantown), comments that it does not have a PPA-approved tariff, and that the only tariff Germantown has is on file with the Public Utility Commission (PUC).

While we recognize that the PPA has authority to regulate partial-rights taxicabs in the City of Philadelphia, PPA should specify the statutory authority for these newly proposed subsections in the Regulatory Analysis Form (RAF) and the preamble accompanying the final-form regulation.

2. Section 1027.5. Agreement of sale. – Need; Reasonableness of requirements.

Subsection (b) currently requires that an agreement of sale for transferrable rights be executed by all parties in the presence of the Director or a designee. The process to apply for the sale of transferable rights is then outlined in Sections 1027.6 through 1027.12. PPA proposes to amend this subsection to require that the agreement of sale be executed at the same time that the sale is initiated as provided in Section 1027.6(a)(1) (relating to application documents).

PPA states in its preamble,

There are currently many agreements of sale filed with the Authority without a corresponding transfer of rights application. We have found that confusion as to who actually owns the transferable rights, and false claims related to who may use those rights germinate in these scenarios. We believe it to be in the best interests of the parties to the agreement of sale and the public concerned about who is actually using the rights at issue, to impose this modest scheduling requirement.

However, a commentator states that the proposed amendment would impose an undue burden on the way business is regularly conducted within the industry. The commentator states that in the normal course of business, the agreement of sale and transfer of rights are multi-step processes which would be difficult to complete in one sitting. Another commentator states that having an agreement of sale in place is essential before a broker can move forward in any sale transaction, including submitting a transfer application to PPA.

Based on commentator concerns and our review of the process to apply for the sale of transferable rights as outlined in Sections 1027.6 through 1027.12, we question the need for and reasonableness of requiring the agreement of sale to be executed at the same time the sale is initiated. For example, we question the reasonableness of requiring the acquisition of third-party documents such as a certificate of good standing from the Corporation Bureau (Section 1027.7(b)(4) and (5)), evidence of the removal of liens (Section 1027.8(c)) or loan documents (Section 1027.8(f)) in advance of the signing of an agreement of sale.

Also, we note that Section 1027.8(d) (relating to continuing service) states clearly that “[t]he owner of the rights subject to sale shall confirm that the rights will remain in active service pending review of the application.” Further, Section 1027.12 (relating to approval process and closing on sale) makes it clear that ownership of the transferable rights remain with the seller until the closing of the transaction. For these reasons, we question the need to amend this subsection based on PPA’s intent to alleviate confusion.

However, we recognize that having many agreements of sale filed with PPA without a corresponding transfer of rights application could be problematic. Commentators suggest that PPA create a reasonable, mandatory timeframe within which the transfer of rights applications must be submitted after the signing of the agreement of sale. We agree that it would be in the best interests of PPA, the parties to the agreement of sale and the public to impose a reasonable, mandatory scheduling requirement and recommend that PPA include such a requirement in the final-form regulation. If amended in final-form, PPA also should clearly state the consequences of non-compliance.

If PPA chooses to keep this subsection as proposed, in its final-form RAF and preamble, PPA should provide concrete examples that demonstrate the need for this change, explain how the contemporaneous filing requirement is reasonable in light of the numerous documents which must be submitted under Sections 1027.6 through 1027.12, and address how the benefits outweigh the costs and adverse effects.

Additionally, if PPA maintains the language as proposed, PPA should thoroughly review its regulations for consistency. For example Section 1027.8(b) states that the “proposed agreement of sale must be signed . . . on **or before** the date the SA-1 is filed.” (Emphasis added.)

These concerns and comments relate similarly to Section 1059.4 (relating to agreement of sale of limousine rights) and we ask PPA to consider similar amendments to Section 1059.4 in the final-form regulation, or to provide additional, appropriate support in the final RAF for PPA’s decision not to amend Section 1059.4.

3. Section 1059.4. Agreement of sale. – Clarity.

In the preamble, PPA states that this section is amended to “**mirror** the substantially similar section related to the sale of taxicab transferable rights at § 1027.5.” (Emphasis added.) The proposed language states:

. . . at the time the sale is initiated as provided in § 1059.5 (relating to application for sale of transferable rights).

PPA’s proposed language in Section 1027.5, which Section 1059.4 is to mirror, states:

. . . at the time the sale is initiated as provided in § 1027.6(a)(1) (relating to application for sale of transferable rights). (Emphasis added.)

Recognizing that PPA may amend these sections related to the prior comment, we ask PPA to amend this reference as appropriate, mirroring Section 1027.5 for consistency.