

# PROPOSED RULEMAKING

## PHILADELPHIA PARKING AUTHORITY

[ 52 PA. CODE CH. 1005 ]

[ Doc. No. 126-2 ]

### Electronic Testimony at Administrative Hearings

The Philadelphia Parking Authority (Authority), on February 27, 2012, adopted a proposed rulemaking order which establishes a regulation permitting electronic (telephonic or audio-visual) testimony at certain administrative hearings, under certain limitations.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 7, 2012, the Authority submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Urban Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Authority, the General Assembly and the Governor of comments, recommendations or objections raised.

*Proposed Rulemaking Order; Philadelphia Taxicab and Limousine Regulations; Doc. No. 126-2*

### Proposed Rulemaking Order

*By the Authority:*

In accordance with of the act of July 16, 2004, (P. L. 758, No. 94), as amended, 53 Pa.C.S. §§ 5701 et seq., (the "Act"),<sup>1</sup> the Authority formally commences its rulemaking process to promulgate a regulation to provide for electronic testimony, under certain terms and conditions, at administrative hearings. The Authority seeks comments from all interested parties on these proposed regulations, which are found at Annex A to this Order.

#### A. Background

Pursuant to Section 23 of the Act, the Authority initiated regulatory oversight of taxicab and limousine service providers in Philadelphia on April 10, 2005. On December 3, 2011, the Authority's new taxicab and limousine regulations became effective upon publication in the *Pennsylvania Bulletin*. 41 Pa.B. 6499 (December 3, 2011).

#### *Discussion*

Members of the public who use taxicab and limousine service often do so in the course of business, travel and tourism. They are often not Philadelphia residents. Nearly half of administrative enforcement actions initi-

ated by the Authority against taxicabs or limousines in Philadelphia begin with a complaint from members of the public. Many of the enforcement complaints are contested by regulated parties, which necessitates on-the-record administrative hearings. At these hearings the Authority bears the burden of proving by a preponderance of the evidence that the respondent committed the alleged infraction.

It is often difficult to advance these administrative complaints because the primary complainant does not reside in the Philadelphia area or is simply unable to take time away from work or family to appear at an administrative hearing. Similarly, regulated parties may find defending these complaints difficult because defense witnesses are similarly unavailable for these hearings. The proposed regulation will ease the burden of all parties to administrative hearings as to the receipt of non-party witness testimony.

The Authority provided advanced notice of this proposed rulemaking to the Chairman of the City of the First Class Taxicab and Limousine Advisory Committee ("Advisory Committee") by way of email and First Class United States Mail, with proof of mailing on January 13, 2012. The same form of notice was used to forward the proposed regulation to each member of the Advisory Committee; however, those members with inactive or unavailable email addresses only received notice through First Class United States Mail, with proof of mailing. Notice was also provided through email to regulated parties who maintain an email account with the Authority. A copy was also placed on the Authority's website. The Authority received no comments.

#### *Conclusion*

The Authority, therefore, formally commences its rulemaking process to promulgate this regulation to become part of 52 Pa. Code Part II in a manner consistent with Annex A to this Order. The Authority seeks comments from all interested parties on this proposed body of regulations, which are found at Annex A to this Order. The Authority hereby advises that all comments submitted in response to this Order will be posted, without redaction of name, address, or other personal information or comment provided, on the website of the Independent Regulatory Review Commission, which may be reached at 717-783-5417.

Accordingly, under sections 13 and 17 of the Act, 53 Pa.C.S. §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P. L. 287, No. 22), as amended, 53 Pa.C.S. §§ 5505(d)(17), (d)(23), (d)(24); sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P. S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5 we are considering adopting the proposed regulations set forth in Annex A<sup>2</sup>; *Therefore, It Is Ordered That:*

1. A proposed rulemaking be opened to consider the regulation set forth in Annex A.

2. The Executive Director shall submit this proposed rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality.

<sup>1</sup> See Sections 13 and 17 of the Act.

<sup>2</sup> The Authority does not receive money from the State Treasury and is, therefore, not subject to section 612 of the Administrative Code of 1929, 71 P. S. § 232.

3. The Executive Director shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary of the Board shall certify this proposed rulemaking Order and Annex A and that the Executive Director shall deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of any written comments referencing the docket number of the proposed regulation be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Philadelphia Parking Authority, Attn: General Counsel, 3101 Market Street, 2nd Floor, Philadelphia, PA 19104.

6. A copy of this proposed rulemaking Order and Annex A shall be served on the City of the First Class Taxicab and Limousine Advisory Committee and a copy shall be posted on the Authority's website at [www.philapark.org/tld](http://www.philapark.org/tld).

7. The contact person for this proposed rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

VINCENT J. FENERTY, Jr.,  
*Executive Director*

#### Annex A

### TITLE 52. PUBLIC UTILITIES

## PART II. PHILADELPHIA PARKING AUTHORITY

### Subpart A. GENERAL PROVISIONS

## CHAPTER 1005. FORMAL PROCEEDINGS

### Subchapter B. HEARINGS

#### HEARINGS

#### § 1005.114. Electronic testimony.

(a) *Purpose and scope.*

(1) In-person testimony is normally preferable to testimony by telephone or audio-visual means. There can be reasons to justify receiving testimony by telephone or audio-visual means, including the transitory nature of many of the users of taxicabs and limousines. This section is promulgated to provide the conditions under which testimony by telephone or audio-visual means will be scheduled and received to safeguard the due process rights of the parties and to ensure that testimony by telephone or audio-visual means is received under uniformly applied rules.

(2) When the general rules of this subpart conflict with this section, this section controls.

(3) This section applies to the testimony of witnesses in enforcement actions.

(4) This section does not apply to the following proposed witnesses:

- (i) Authority employees.
- (ii) Parties to an enforcement action.
- (iii) Employees of parties to an enforcement action.
- (b) *Scheduling of telephone or audio-visual testimony.*

(1) The Authority or presiding officer may schedule, on its own motion, testimony by telephone or audio-visual means of a witness when it appears from the record that the witness is located at least 25 miles from the location

at which the Authority or presiding officer will conduct the hearing, without regard to the boundaries of this Commonwealth.

(2) The Authority or presiding officer may schedule testimony by telephone or audio-visual means of a witness, at the request of one or more parties, when one of the following applies:

(i) The parties consent to the receipt of testimony by telephone or audio-visual means.

(ii) The witness is reasonably unable to testify in person due to employment, transportation, mobility, health reason or other compelling problem.

(iii) The witness is a police officer within the definition of "police officer" in 234 Pa. Code Rule 103 (relating to definitions), offered for testimony regarding the impoundment of a taxicab or limousine, or a vehicle acting as a taxicab or limousine.

(3) Only a witness scheduled to testify by telephone or audio-visual means, or identified prior to the taking of testimony in accordance with subsection (d), may testify by telephone or audio-visual means. The testimony of each other witness shall be received in person.

(4) The Authority or presiding officer will promptly rule on a request that testimony be taken by telephone or audio-visual means after a reasonable attempt has been made to inform the parties of the request, the basis for the request and the right of a party to object. The basis for the request, the position of the parties, if known, and the ruling will be documented on the record.

(5) A witness scheduled to testify by telephone or audio-visual means will be permitted to testify in person.

(c) *Procedures subsequent to scheduling.*

(1) If a party moves to withdraw consent to the receipt of testimony by telephone or audio-visual means prior to the taking of testimony, the Authority or presiding officer will allow the withdrawal if it is found that the consent was not freely and knowingly given.

(2) An objection to the receipt of testimony by telephone or audio-visual means shall set forth the reasons in support thereof and promptly communicated to the Authority or presiding officer and any opposing party. An objection may not be asserted subsequent to the taking of testimony.

(3) The Authority or presiding officer will promptly rule on objections to testimony by telephone or audio-visual means after a reasonable attempt to obtain the position of the other party. The basis for the objection, the position of the other party, if known, and the ruling will be documented on the record.

(4) A party may pursue an objection to telephone or audio-visual testimony at the hearing and shall set forth reasons in support thereof. If the objection is sustained, the Authority or presiding officer will reschedule the hearing at a later date, either in person or by telephone or audio-visual, in accordance with this part. If the objection is not sustained, the Authority or presiding officer may proceed with the hearing in accordance with this subpart.

(d) *Hearing process.*

(1) At the start of the hearing, the Authority or presiding officer will state on the record the time and telephone or audio-visual numbers at which the Authority or presiding officer initiates the contact with any party, witness, legal counsel or authorized agent who is to testify or appear by telephone or through audio-visual means.

(2) The Authority or presiding officer will permit parties a reasonable opportunity to question other parties or witnesses testifying by telephone or audio-visual means for the purpose of verifying the identity of the parties or witnesses. Falsification of identity is prohibited.

(3) A party or witness not identified to the Authority or presiding officer and all other parties before the beginning of the testimony will not be permitted to testify by

telephone or audio-visual. Testimony taken or given in violation of this subsection will be excluded from consideration.

(4) The oath or affirmation administered to parties or witnesses testifying by telephone or audio-visual means shall indicate that the parties or witnesses will not testify from documents that are not in the record.

(5) The Authority or presiding officer, the person testifying by telephone or audio-visual means and persons in the room in which the Authority or presiding officer is present while telephone or audio-visual testimony is presented shall be able to hear and speak to one another through the telephone or audio-visual connection used to submit testimony under this section.

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