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State of Rhode Island
Division of Public Utilities and Carriers
Docket 13 MC 08
Second Hearing Session

Testimony
Of

Terrence E. Mercer
Associate Administrator for Motor Carriers
Division of Public Utilities and Carriers

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Terrence Mercer and my business address is:
Associate Administrator, Division of Public Utilities and Carriers
("Division"), 89 Jefferson Boulevard, Warwick, RI 02888.

Q. WHAT IS YOUR POSITION AT THE DIVISION?

A. I am the Associate Administrator assigned to oversee the Motor
Carriers Section.

Q. HOW LONG HAVE YOU WORKED FOR THE DIVISION?

A. I have been with the Division for 12 ½ years, the past 10 ½ years
overseeing the Motor Carriers Section.

**Q. HAVE YOU PREVIOUSLY TESTIFIED IN DIVISION
HEARINGS?**

A. Yes, I have testified in numerous Division hearings regarding
Motor Carrier issues.

**Q. ARE YOU AWARE OF THE RATIONALE BEHIND THE
AMENDED RULES BEING PROPOSED IN THIS DOCKET?**

A. Yes. The Division held a hearing on a set of proposed rules in this
same docket on March 21, 2013. At that time, a fairly large number of
individuals from the public motor vehicle industry, the taxicab industry,
and the general public appeared to weigh in on the rules, either in support
of or in opposition to the rules as originally proposed. While there was

1 generally wide support for the *need* for the rules, there were some general
2 concerns expressed by a number of individuals about specific rules or
3 sections of proposed rules.
4

5 **Q. WAS THERE GENERAL CONSENSUS ABOUT WHICH RULES**
6 **SEEMED THE MOST DISCONCERTING FOR THOSE**
7 **EXPRESSING CONCERN OR OPPOSITION?**

8
9 A. Yes. The overwhelming majority of individuals expressing concern
10 centered their remarks on the rules governing vehicle age and mileage.
11 Even those in support of the intent of the limitations felt they were too
12 restrictive and did not, in most cases, allow for exemptions or waivers for
13 “pristine” or “extraordinary” vehicles that fell outside the originally
14 proposed limitations.
15

16 **Q. WERE THERE ANY OTHER CONCERNS ARTICULATED BY**
17 **MORE THAN ONE OR TWO INDIVIDUALS?**

18
19 A. Yes. A number of individuals pointed out inconsistencies in the
20 proposed rules relative to federal guidelines for the number of hours a
21 driver could operate a PMV. Others expressed a concern about the
22 requirement that a driver present a receipt upon request at such times when
23 the driver or PMV company might be actually providing the service in a
24 sort of “sub-contracting” role. Still others expressed concern about the
25 proposed price floor. Everyone understood it was something mandated by
26 the General Assembly, but some felt the proposal of \$40.00 was too high
27 and the New England Livery Association thought it was too low; they
28 suggested it be set at \$45.00.
29

30 **Q. WE ARE HERE TODAY TO DISCUSS AN AMENDED SET OF**
31 **PROPOSED RULES, SOMEWHAT DIFFERENT FROM THOSE**
32 **ADDRESSED AT THE MARCH 21st HEARING. IS THAT RIGHT?**

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A. Yes.

Q. CAN YOU EXPLAIN THE BASIS FOR THE NEW AMENDED RULES?

A. Absolutely. After listening to roughly five hours of testimony from a wide range of individuals, I was swayed on a couple of different issues. I remain in full support of the majority of the rules and even more so in support of the general intent of the rules. However, I was absolutely swayed from my original position on a few “hot topic” issues that were central to the March 21st hearing. After hearing the five hours of testimony, I worked with staff and attempted to draft some amendments I hoped would satisfy some of those who expressed serious concern.

Q. WHAT RULES SPECIFICALLY DID YOU PROPOSE TO AMEND OR SOFTEN?

A. A couple of the easier ones to address were the rules involving drivers’ length of shifts and the production-of-a-receipt issue for subcontractors raised by the New England Livery Association and others.

Q. HOW DID YOU ADDRESS THOSE ISSUES?

A. The new proposed Rule H-6 requires drivers to conform to the “hours of service” requirements for passenger-carrying drivers established by the Federal Motor Carrier Administration. The added benefit of the rule as it is now proposed is it will not have to be changed if/when the FMCSA ever changes its requirements. It will simply mirror and track those federal guidelines. As for the receipt requirement, it was reasonable to amend the rule to acknowledge that PMV companies sometimes subcontract with other PMV companies to transport clients and that the first company might

1 not want the driver from the other company providing a receipt. Rule F-2
2 now clearly indicates “sub-contractors” are not required to provide a
3 receipt to the passenger – but that the original “contractor” would have to
4 provide an adequate receipt upon request at the time the client renders
5 payment. The mechanism for furnishing the receipt in that instance is left
6 for the PMV certificate holder..

7
8 **Q. OK. YOU SAID SOME ISSUES WERE EASIER TO ADDRESS**
9 **THAN OTHERS. YOU GAVE US THE TWO “EASY” EXAMPLES**
10 **IN YOUR LAST ANSWER. WHAT OTHER AMENDMENTS ARE**
11 **BEING PROPOSED THAT WERE NOT AS “EASY” AS YOU PUT**
12 **IT?**

13
14 **A.** Well, it’s not so much that it wasn’t as “easy” to see the other side
15 of the argument as articulated at the first hearing. It’s that it was a little
16 more involved to try to solve – or at least soften. And those all revolved
17 around the vehicle age and/or mileage rules.

18
19 **Q. HOW DO THE AMENDED RULES ADDRESS THE CONCERNS**
20 **ARTICULATED AT THE ORIGINAL HEARING?**

21
22 **A.** They’re addressed in a number of ways and I think, collectively,
23 the amendments allay a lot of the concerns voiced at that hearing. For
24 example, there were a few of individuals who felt the three-year limitation
25 to be placed into service was too restrictive and, moreover, that such a rule
26 would decimate the resale market for these cars in Rhode Island. It was
27 difficult to ignore the disconnect in the suggestion raised at the first
28 hearing that if a 2008 vehicle is “suitable” to be operated as a PMV by
29 Company-A today, how it could be deemed “unsuitable” tomorrow for
30 Company-B to use it in the same manner simply because Company-B
31 bought it from Company-A.

1 Q. **HOW DID YOU ADDRESS THAT CONCERN?**

2

3 A. Well, we defined “Into Service” in Section A to acknowledge that
4 the Division would consider a vehicle already properly being used in the
5 PMV fleet of a certificate holder to be, essentially, “in service as a PMV in
6 Rhode Island” and, thus, already having met the year limitation.

7

8 Q. **A SORT OF GRANDFATHER CLAUSE FOR VEHICLES?**

9

10 A. Exactly. If you read the definition in Section A, it makes it clear that a
11 vehicle currently used as a PMV by Company-A could be bought and used
12 as a PMV by Company-B, so long as all the other criteria set out in the
13 rules is met.

14

15 Q. **HOW ELSE DID YOU AMEND THE VEHICLE AGE/MILEAGE
16 RULES?**

17 We changed a couple of things that actually made the rule more
18 streamlined and addressed all of the articulated concerns. We decided to
19 change the three-year “into service” limitation to four years, and we also
20 provided for a “waiver” or “exemption” for extraordinary “older cars”
21 (beyond the 4-year limit) to be considered to be placed into service. I
22 believe the revised “in-service” definition discussed above, coupled with a
23 four-year limit (and the way the Division calculates model year, as
24 explained at the last hearing) will allay the overwhelming majority of the
25 concerns articulated. Bumping it up by just one year hopefully will reduce
26 the number of “waiver” requests the Division will receive.

27

28 Q. **WHAT, IF ANYTHING, DID YOU DO TO AMEND THE
29 VEHICLES ON THE OTHER END, ON THE 300,000-MILE
30 LIMITATION?**

31

1 A. We did two things – and again I think, combined, they will allay
2 the majority of concerns. We have now set the 300,000-mile limitation to
3 be considered relative to the vehicle being presented to the State Garage
4 for its annual safety inspection. That way, certificate holders will not be
5 forced to take the vehicle off the road (on the honor system as originally
6 proposed) at exactly 300,000 miles. And, beyond that, we established a
7 provision for requesting a waiver as warranted.

8

9 **Q. WAS RULE ‘C’ AMENDED IN ANY OTHER WAY AFTER YOU**
10 **RECONSIDERED YOUR POSITION AND MADE THE**
11 **AMENDMENTS YOU ALREADY DISCUSSED?**

12

13 A. As a matter of fact, yes. Rule C-8 originally contemplated two types of
14 PMV vehicles – sedans and the like, and bigger multi-passenger vehicles.
15 We had provided for a “waiver” or “exemption” for the bigger vehicles
16 and not the smaller ones. So, originally, we had two sub-categories
17 designated as “a” and “b”. In fact, the New England Livery Association
18 suggested at the first hearing that we considered a third sub-category for
19 vehicles with a GVW over 10,000 pounds, suggesting that those types of
20 vehicles are designed to go 500,000 miles or more.

21 Well, once we changed the vehicle-age component, reworked our
22 determination of “in service” and provided for an exemption at the front
23 end and the back end of a vehicle’s life, it was determined we didn’t need
24 any sub-categories at all, although we did incorporate the 500,000-mile
25 limit suggested for vehicles over 10,000 GVW as well.

26

27 **Q. SO, RULE C NOW DEALS ONLY WITH PMVs “AS A WHOLE”**
28 **REGARDLESS OF VEHICLE TYPE, LENGTH AND PASSENGER-**
29 **CARRYING CAPABILITIES?**

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31 A. That’s right. The need for sub-categories essentially went away when an
32 “exemption” provision was established across-the-board.

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Q. ARE THERE ANY OTHER SUBSTANTIVE CHANGES IN THE RULES (FROM WHAT WAS ORIGINALLY PROPOSED) THAT YOU'D LIKE TO DISCUSS?

A. No. I believe that covers the majority of the substantive rules. There are a couple of minor things like the numbering of the definitions in Section A because of the insertion of the definition of "into service" and the deletion of numbered/lettered sections of Rule C-8 as discussed in the answer to the previous question.

Q. ONE FINAL LINE OF QUESTIONING. THERE WAS ALSO CONSIDERABLE TESTIMONY IN YOUR ORIGINAL FILED STATEMENTS AND TESTIMONY FROM OTHERS AT THE MARCH HEARING REGARDING PMVs "STEALING TAXI WORK." WHAT, IF ANYTHING, CAN YOU TELL US ABOUT THAT ISSUE.

A. The Motor Carriers Section is still firmly of the mind that there are PMV certificate holders providing the type of work expressly governed by Chapter 14 of Title 39 – the Taxicab Statutes. There was much discussion at the last hearing about these operators "not sitting at taxi stands and not responding to street hails." They insisted their vehicle responding to this type of request for service were being dispatched, not "trolling" for jobs. Well, that is precisely the type of Chapter 14 work contemplated for LIMITED Public Motor Vehicles, which are completely different than Public Motor Vehicles governed under Chapter 14.1.

Q. WHAT IS A LIMITED PUBLIC MOTOR VEHICLE, OR "LPMV"?

A. An LPMV looks exactly like a taxicab and is governed exactly like a taxicab, but can only be dispatched; it cannot respond to street hails or sit

1 at taxicab stands to generate fares. The Certificates of Public Convenience
2 and Necessity authorizing LPMVs (like taxicabs) also spell out the
3 territories where the LPMV may pick up passengers. The vehicle is
4 marked like a taxi, metered like a taxi and governed like a taxi under
5 Chapter 14. They are indistinguishable, except they must be dispatched.
6

7 **Q. SO, WHEN YOU’VE TESTIFIED IN THE PAST ABOUT PMVs**
8 **STEALING TAXI WORK, YOU WERE REALLY TALKING**
9 **ABOUT ALL ASPECTS OF CHAPTER 14 WORK? IS THAT**
10 **ACCURATE?**

11
12 A. Absolutely. For a company operating in that manner to suggest that it’s
13 not “taxi” work because they don’t sit at a taxi stand, is flat-out wrong-
14 headed. That work was designated decades ago by the General Assembly
15 to be in the realm of Chapter 14 and specifically in the realm of LIMITED
16 Public Motor Vehicles. There’s no logical way the legislature would have
17 created the category of PMVs in 2002 to do identical work as a category
18 long-ago established to do so.
19

20 **Q. WHAT, THEN, WOULD YOU SAY ABOUT THE TESTIMONY**
21 **FROM THE LAST HEARING ABOUT THE CONSIDERABLE**
22 **NUMBER OF SUCH JOBS BEING SERVICED IN THIS MANNER**
23 **BY PMVs?**

24
25 A. First, I would question the numbers. Taxicabs can, and currently are,
26 providing this type of service. But even if those numbers were borne out,
27 it doesn’t change the fact that the work should be provided by carriers
28 governed under Chapter 14.
29 That being said, there was considerable testimony that, in the opinion of
30 some, the “taxi industry” (or Chapter 14 carriers) would not be able to
31 handle such an influx of calls for service. I don’t know that to be true, but

1 I also know that these PMV carriers should not be rewarded for fostering
2 the growth of an illegal offshoot of the taxi industry.

3 If, however, there has developed a large segment of business that needs
4 and wants this type of service, I would think it may very well suggest a
5 need for more Limited Public Motor Vehicles.
6

7 **Q. DO YOU HAVE ANY SUGGESTION ON HOW TO DEAL WITH**
8 **THAT POSSIBILITY?**
9

10 A. I've thought long and hard about that issue. In order to obtain a CPCN for
11 an LPMV, an applicant must prove not only "fit, willing and able," but
12 also that a "public need" for the service exists, just like with taxis. That's
13 not always an easy hurdle to clear – and it's precisely why, in my mind
14 anyway, many "gray-area" PMV sedan services have popped up. I'm not
15 an attorney, so I don't know the legality of what I will suggest, but it
16 seems perhaps the Division might have some flexibility to relax the
17 standard or "lower the hurdle" to proving "public need" for LPMV
18 applicants. That way, they're properly regulated under Chapter 14 as
19 always envisioned, they can't under-cut taxicabs, and would be available
20 to service what is suggested to be a growing population of fare-paying
21 passengers.
22

23 **Q. IN YOUR MIND, WOULD THAT FIX THE PROBLEM?**
24

25 A. I'm not sure. I know for sure there IS a problem. Is that the solution? I
26 don't know. I was just trying to find some way to provide the service to
27 folks who may rely on it – but under the proper regulatory framework.
28

29 **Q. FINALLY, YOU MENTIONED EARLIER THAT INDIVIDUALS**
30 **TESTIFIED AT THE PREVIOUS HEARING ABOUT THE**
31 **SUGGESTED PRICE FLOOR OF \$40.00. DO THESE AMENDED**

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**RULES CONTEMPLATE A CHANGE IN THAT MINIMUM
ALLOWABLE CHARGE?**

A. No. The proposed price floor remains at \$40.00.

Q. DO YOU HAVE ANYTHING FURTHER TO ADD?

A. No, that would conclude my testimony.