

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Rules And Regulations Governing The :
Transportation Of Passengers Via : Docket No. 13-MC-08
Public Motor Vehicles :

REPORT AND ORDER

1. Introduction

On March 5, 2013, the Rhode Island Division of Public Utilities and Carriers' ("Division") published a "Notice Of Rulemaking And Public Hearing" wherein interested persons were invited to submit data, views, or arguments, orally or in writing, and/or attend a public hearing in response to the Division's proposed adoption of *Rules and Regulations Governing the Transportation of Passengers via Public Motor Vehicles* ("PMV Rules").¹ The Division's Motor Carrier Section ("Motor Carrier Section") is sponsoring the adoption of the proposed PMV Rules. As will be explained below, the Division published two such notices (on March 5, and July 31, 2013) and conducted two public hearings (on March 21, and August 14, 2013) relative to the Division's adoption of PMV Rules, infra.

As background, in advance of publishing the March 5, 2013 "Notice Of Rulemaking And Public Hearing," the Motor Carrier Section mailed copies of its proposed PMV Rules, along with a copy of the supporting written testimony that the Motor Carrier Section planned to rely upon during the rulemaking

¹ The notice was published in conformance with the requirements of R.I.G.L. §42-35-3.

process, to all public motor vehicle (“PMV” or “PMVs”) certificate holders doing business in Rhode Island. These documents were mailed to the certificated PMV industry on January 23, 2013.

Additionally, upon receipt of the proposed PMV Rules, the Administrator appointed the undersigned hearing officer to conduct a rulemaking proceeding in accordance with the requirements and procedures delineated in R.I.G.L. §§42-35-3 and Rule 12(f)(1) of the Division’s *Rules of Practice and Procedure*. The Division thereupon established the instant docket and scheduled and conducted two (2) duly noticed public hearings on the Motor Carrier Section’s proposed PMV Rules.

Additionally, in keeping with the requirements of R.I.G.L. §42-35-3(a)(4) and §42-35-3.3, the Division provided notification of the instant rulemaking to the Governor’s Office and the Rhode Island Economic Development Corporation (“RIEDC”). Neither office expressed any concern that the Division’s contemplated PMV Rules would, if formally adopted by the Division, have a significant adverse economic impact on any small business.

The Division conducted an initial public hearing on the proposed PMV Rules on March 21, 2013. The hearing was conducted in the Division’s hearing room, located at 89 Jefferson Boulevard in Warwick, Rhode Island. Attorney Christy L. Hetherington, Special Assistant Attorney General, entered an appearance for the Motor Carrier Section. Also at that time, Mr. Terrence Mercer, the Division’s Associate Administrator for the Motor Carriers, proffered pre-filed direct testimony which identified and explained the rationale for the

proposed PMV Rules. These initially proposed PMV Rules and supporting testimony were entered as exhibits in this docket.²

Predicated upon the written and verbal comments offered by the industry prior to and during the March 21, 2013 public hearing, which were critical of a number of key provisions contained in the proposed PMV Rules, the Motor Carrier Section decided to utilize and adopt many of the comments and suggestions that were offered by the industry to reconsider and amend several of the regulatory requirements contained in the original draft of the proposed PMV Rules. A copy of the Motor Carrier Section's redacted PMV Rules is attached to this Report and Order, as "Appendix 1," and incorporated by reference.

Subsequently, on June 25, 2013, the Motor Carrier Section mailed copies of its now redrafted proposed PMV Rules, along with a copy of supplemental written testimony that identifies and explains the changes that were made, to Rhode's Island's PMV certificate holders. These latest documents were mailed to the certificated PMV industry on June 25, 2013.

Following this mailing, on July 31, 2013, the Division published a new "Notice Of Rulemaking And Public Hearing" wherein it invited interested persons to submit data, views, or arguments, orally or in writing, and/or attend a public hearing in response to the Division's now amended PMV Rules.

² The originally proposed PMV Rules are marked as Exhibit 4; Mr. Mercer's originally filed testimony is marked as Exhibit 1.

The Division conducted a second public hearing, on the amended PMV Rules on August 14, 2013.

2. Summary of Rulemaking Authority

The Division notes that its authority to promulgate rules and regulations for PMV operations in Rhode Island is derived from the following statutory law:

- R.I.G.L. § 39-14.1-2, which in pertinent part provides:

Every person owning or operating a motor vehicle engaged as a public motor vehicle is declared a common carrier and subject to the jurisdiction of the division of public utilities and carriers. The division may prescribe any rules and regulations that it deems proper to assure adequate, economical, safe and efficient service....

- R.I.G.L. § 39-14.1-1(7), which in pertinent part provides:

“Public motor vehicle” means and includes every motor vehicle for hire, other than a jitney, as defined in §39-13-1, or a taxicab or limited public motor vehicle, as defined in §39-14-1, used for transporting members of the general public for compensation in unmarked vehicles at a predetermined or prearranged charge to such points as may be directed by the passenger. All vehicles operated under this chapter shall conform to specifications established by the division....

- R.I.G.L. § 39-14.1-6, which in pertinent part provides:

The division shall establish and set a minimum allowable charge for public motor vehicle services....

3. Rationale for the Proposed PMV Rules

In his initial pre-filed testimony, Mr. Mercer related that many of the provisions contained in the proposed PMV Rules essentially restate the statutory requirements contained in R.I.G.L. Chapter 14.1, “like the requirement to obtain a certificate from the Division and the requirement to maintain certain levels of insurance... and the treatment of vehicles.” Mr. Mercer noted, however, that other rules “are extrapolations of statute or new rules altogether.”³

Mr. Mercer additionally explained that the proposed PMV Rules are also designed to curb the use of PMVs as a transportation service that is indistinguishable from taxicab service, which he related is of growing concern to the Division. Mr. Mercer cited the large number of complaints he has received from passengers, other PMV companies and taxicab companies, who complain about improper use of PMVs. As examples, Mr. Mercer related that many of the complaints are from passengers who after calling for a taxicab find that the vehicle that shows up is “something other than a taxicab.” He noted that many of these complaints involve concerns from the public on whether they feel safe getting into an unmarked car that responded to a specific request for a taxicab. Mr. Mercer also related that many of these complaints involve a failure by PMV companies to provide the applicable rate information at the time

³ Exhibit 1, p. 4.

of booking the service as required by law.⁴ Mr. Mercer declared that the proposed PMV Rules are intended, in part, to remedy complaints of this nature.

In discussing the individual rules, Mr. Mercer observed that Rule A contains definitions, which he described as duplicative of many of the definitions already contained in Title 39 of the Rhode Island General Laws. Mr. Mercer observed that Rule B restates statutory mandates in R.I.G.L. Chapter 14.1, which require PMV companies to obtain a certificate of operating authority from the Division before providing any PMV transportation services, and that such companies maintain a minimum of \$1.5 million in liability insurance.⁵

Mr. Mercer next related that “Rule C deals specifically with the vehicles to be operated as PMVs,” which Mr. Mercer explained is based on a statutory change that occurred last year and which now requires the Division to establish specifications for vehicles used as PMVs. Mr. Mercer stated that “Rule C-8 spells out the acceptable age of a vehicle to be first placed into service as a PMV and sets out a mileage cap.”⁶

According to Mr. Mercer, Rule D satisfies a recently enacted legislative mandate that the Division set “a minimum allowable charge” for PMV services. In explaining the justification for a minimum charge, Mr. Mercer opined that PMV services “should be easily distinguishable from a taxicab and that the service rendered in a PMV is expected to be a ‘premium’ service. Mr. Mercer

⁴ 3/21/13, Tr. 12-19; also Exhibit 3.

⁵ Exhibit 1, pp. 4-5.

⁶ *Id.*, pp. 5-6.

further opined that a “price floor” “will eliminate the rogue, gray-area sedan services that are really acting like taxicabs and, truth be told, stealing the work of taxicabs.” Mr. Mercer asserted that the \$40 price floor contained in the proposed PMV Rules provides “the best way to distinguish the two types of service. It allows PMVs to provide the premium service envisioned without leaving them the ability to steal taxi work.”⁷

Mr. Mercer also expounded on the matter of PMVs improperly operating as taxicabs. He related that without the proposed PMV Rules, taxicabs “are much more heavily regulated and are bound by territory restrictions that limit where they can pick up passengers and how many taxicabs they may operate.” He added that taxicabs are also:

...required by law to charge only fares approved by the Division and calculated by a functioning taximeter. Conversely, ... [PMVs] are awarded authority to pick up passengers anywhere in the state, in any number of vehicles, and may charge whatever rate they wish – as long as the passenger agrees in advance to pay that rate... Presently, that rate could be higher than taxi rates; it also could be the same or even lower, thereby giving the PMVs a big advantage – if they were allowed to service call-and-demand requests. Also, taxicab vehicles also are subjected to vehicle age and/or mileage limitations that before the recent statutory change were not applicable to PMV fleets.⁸

Mr. Mercer next related that Rule E also comes directly from statute. He stated that the Rule prohibits PMVs from acting like taxicabs by responding to

⁷ Id., p. 7.

⁸ Id., pp. 7-8.

“street hails.” The Rule additionally requires PMV companies to provide to the prospective clients appropriate vehicle and pricing information.⁹

Mr. Mercer next described Rules F and G as follows:

Rule F is very simple. It requires PMV companies to keep a written document detailing the service being provided that lists certain things, like the date and time the solicitation was made and accepted, the date and time the service was rendered, what length of service is to be rendered and the agreed-upon rate (so long as it is not lower than the ‘price floor’ of course). It also requires that a copy be furnished to the client at the end of the trip, so it’s envisioned to be a duplicate type of document where the top copy is retained by the driver for the company’s records and the bottom copy is handed to the client. It was requires that the Division’s contact information be printed along the bottom of the receipt.

...Rule G is one of the “generic” rules dealing with “Conduct of Business” of PMV companies regarding their dealings with this regulatory agency. It spells out that they must adhere to certain requirements such as having a business (and mailing) address on file with the Division, and, ultimately, to boil it down, make sure they keep us apprised of any changes in their regulated business. It also prohibits smoking by drivers at all times in PMVs, although PMV companies would be free to allow (or prohibit) passengers to smoke as they see fit. Most of that language has been lifted from the taxicab industry rules.¹⁰

Mr. Mercer pointed to R.I.G.L. §§ 39-14.1-2 and 39-3-14 as the legal justification behind Rules G and F, respectively. He related that §39-14.1-2 gives the Division the authority to “prescribe any rules and regulations that it

⁹ Id., p. 8.

¹⁰ Id., pp. 8-9.

deems proper to assure adequate, economical, safe and efficient service;” and that § 39-3-14 requires companies to maintain certain business records.¹¹

Mr. Mercer next related that there is “nothing extraordinary” about Rule H. He testified that the “entire rule is lifted almost verbatim from the Division’s “Driver Rules,” which were properly promulgated in 2006.” Mr. Mercer explained that the “Driver Rules” govern drivers of both taxicabs and PMVs.¹²

Similarly, Mr. Mercer stated, Rule I is “lifted directly” from the taxi industry rules “and simply puts PMV certificate holders on notice that they will be held accountable for violations committed by their drivers and that they shall make copies of all applicable rules... available to their drivers.” Mr. Mercer noted that Rule I also requires that certificate holders report any serious accidents to the Division.¹³

Mr. Mercer also described Rules J, K and L as originating from the Division’s existing taxicab rules. He related that these rules basically spell out the process the Motor Carrier Section will take to investigate complaints and what notice will be given to the parties if any complaint results in a formal hearing. Mr. Mercer noted that Rule L identifies applicable statutory penalties, and refund provisions, that may be imposed in complaint adjudications.¹⁴

Also contained in Mr. Mercer’s initial pre-filed testimony was a summary of the comments he received from the PMV industry after the industry received his mailing of the proposed PMV Rules in January 2013, supra. Mr. Mercer

¹¹ Id., pp. 9-10.

¹² Id., p. 10.

¹³ Id.

¹⁴ Id., pp. 10-11.

related that most of the critical comments were linked to the provisions related to the “vehicle requirements” contained in Rule C and the “price floor” prescribed in Rule D.¹⁵

In his supplemental pre-filed testimony, submitted in advance of the August 14, 2013 public hearing, Mr. Mercer identified and described several amendments that were incorporated into the redrafted proposed PMV Rules. Mr. Mercer stated that these amendments resulted from the Motor Carrier Section’s adoption of many of the comments and suggestions offered by the PMV industry in advance of and during the previous March 21, 2013 public hearing. Mr. Mercer also fully explained why the Motor Carrier Section decided to adopt the particular changes in issue.¹⁶

Also contained in his pre-filed supplemental testimony, Mr. Mercer offered a suggested course of action for those PMV certificate holders whose business model may be adversely affected by the imposition of a \$40 price floor. In short, he suggested that these companies consider transforming their PMV operation into a Limited Public Motor Vehicle (“LMPV”) operation. Mr. Mercer explained that an LMPV looks exactly like a taxicab and is regulated like a taxicab, but can only be dispatched; he related that an LPMV cannot respond to street hails or sit at taxicab stands to generate fares. Mr. Mercer opined that because “there are PMV certificate holders providing the type of work expressly governed by Chapter 14 of Title 39 – the Taxicab [and LPMV]

¹⁵ Id., pp. 12-15.

¹⁶ Exhibit 6, pp. 1-8.

Statutes,” an LPMV operation would legitimize the services currently being provided under the guise of PMV services.

Mr. Mercer added that the Division cannot permit PMVs to “steal” taxi work. Mr. Mercer rejected the argument by some PMV companies that the service they provide is legal so long as they are not waiting in taxicab stands or responding to street hails. He responded as follows:

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

Regarding the argument, from some PMV certificate holders, that the taxicab industry lacks the capacity to perform the short-run services currently offered by PMVs, Mr. Mercer offered the following reply:

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

If, however, there has developed a large segment of business that needs and wants this type of service, I would think it may very well suggest a need for more Limited Public Motor Vehicles.¹⁸

4. Public Comments, Views and Arguments¹⁹

¹⁷ Id., p. 9.

¹⁸ Id., pp. 9-10.

¹⁹ The Division received thirty-two (32) written comments from members of the PMV industry, elected officials and various other interested persons and entities in response to the Motor Carrier Section’s initially proposed PMV Rules. Included in these written comments were views and arguments from: The Honorable Senators James Sheehan (District 36) and Michael McCaffrey (District 29); The New England Livery Association; the North Kingstown Chamber of

As many of the concerns and suggestions that were voiced by the PMV industry, and the public, prior to and during the first public hearing on March 21, 2013 were heeded and adopted by the Motor Carrier Section for inclusion in the amended PMV Rules (Appendix 1)²⁰, the Division sees little benefit in discussing those same comments and suggestions now in this rulemaking decision. The Division will instead focus on the public comments, views and arguments that continue to remain at odds with the now amended PMV Rules.

One PMV certificate holder expressed concern with the definition of “Call and Demand,” as contained in Rule A(7). Specifically, this individual opined that the phrase “pre-arranged-solicitation,” as used in the definition of “Call and Demand,” also be defined. He suggested that a “pre-arranged-solicitation”

Commerce; Holiday Inn (South County/Newport); Van-Go Transport, Ltd; Big Daddy Taxi Service, Inc.; Sentinel Limousine; Columban Fathers, Bristol, Rhode Island; Gillary’s Tavern, Bristol, Rhode Island; Escort Limousine Service; Town of South Kingstown; the Narragansett Chamber of Commerce; the Cranston Chamber of Commerce; the Newport County Chamber of Commerce; Rachel’s Big City Transportation; Genesis Transportation; A Airline Express Limousine and Care Service, Inc.; RocJo Productions; Leisure Limousine, Inc.; Land’s End Limousine Service, Inc.; Ken Fontaine, d/b/a Newport Coach; Daniel Moriarty; Ventura Casey; Becky Still; Laurie Rich; Henry Warner; and a petition, signed by 69 individuals, ostensibly arguing “to stop the new rules and regulations proposed by the RI Division of Public Utilities and Carriers on Limousine Companies” (some additional written comments were offered anonymously or contained illegible signatures). In contrast, the Division received only two (2) written comments in response to the Motor Carrier Section’s amended PMV Rules. These comments were from Rachel’s Big City Transportation and Sentinel Limousine.

During the March 21, 2013 public hearing, the Division received verbal comments, views and arguments from thirty-four (34) individuals. These individuals were identified as: The Honorable Senators William Walaska and Leonidas Raptakis, Chuck O’Koomian, Richard Sardella, Edward Rasa, Ramon Perez, Tom Harris, Deborah Kelso, Bill Lagare, Doug Brady, Dennis Davis, R.J. Von See, Tim Schandera, Jeff Phelan, Brian Thomas, Richard Oliveira, Jody Sullivan, Mallelik Vallejo, Daniel Moriarty, Robert Orsini, Angela McPherson, Robin Sampson, Elaine Bedrossian, John Finneran, Reginal Bulos, Jose Severino, Raul Reynoso, Louis Pimental, Paul Desrosiers, Mike Callahan, John Olinger, Pete Miller, Mike (Checker Cab), and Michael Tartaglione.

During the August 14, 2013 public hearing, the Division received verbal comments, views and arguments from seven (7) individuals, all but two of whom also offered comments at the March 21, 2013 hearing as well. These individuals were identified as: Rich Szilagyi, Daniel Moriarty, Paul Desrosiers, Michael Tartaglione, Bill Lagare, John Finneran, and Anthony Leiter.

²⁰ 3/21/13, Tr. 182-187 and 194-198.

should not require “wait-time for the vehicle arrival.” He related that “if the passenger is ready now, and if the vehicle were present at their location, they would [be able to] hire the vehicle.” This certificate holder proffered a copy of a 1994 Division-issued “Declaratory Ruling,” which he asserted supports his opinion.²¹ Other PMV certificate holders and some members of the public also voiced similar concerns.²²

One PMV certificate holder took exception to the Division’s assertion that small businesses would not be harmed by the imposition of the proposed PMV Rules. He argued that the PMV Rules would, in fact, adversely impact small PMV businesses.²³

Several PMV certificate holders objected to the proposed “price floor” of \$40, as contained in Rule D(1). They claim that “working class and middle class” riders will suffer under a \$40 price floor. Many also argue that there are insufficient taxicab services available to absorb the transportation demands that will result from PMVs being unable to charge less than \$40 per ride. Two PMV certificate holders asserted that it is common knowledge that many taxicab companies refuse to provide short-distance services due to the minimal financial reward. One of these PMV certificate holders also questioned why the Division does not prohibit out-of-state limousine companies from doing business in Rhode Island.²⁴ Additionally, several members of the public urged

²¹ 8/14/13, Tr. 22-24.

²² 3/21/13, Tr. 26; this individual mistakenly claimed that the Division was imposing a “three-hour” waiting time period before a PMV could respond to a request for service. There is no such time limit in the proposed PMV Rules (3/21/13, Tr. 34).

²³ 8/14/13, Tr. 24-25.

²⁴ 8/14/13, Tr. 26-35 and 42-53.

the Division to not do anything that would change the current PMV service paradigm based on their contention that the alternative, taxicab service, is undependable and too expensive.²⁵

Several PMV certificate holders also argued that a \$40 minimum charge would put them and their drivers out of business. One PMV certificate holder stated that he charges \$5 for some services and regularly between \$8 and \$10 for most others.²⁶ Another PMV certificate holder argued in favor of preserving the current PMV regulatory model in the interest of promoting “competition.” He asserted that it would be anticompetitive to prohibit PMVs from competing with taxicabs for the short-distance trips. This PMV certificate holder reasoned: “there’s [sic] a lot of people that won’t get in a taxi anymore.”²⁷

In support of their reasons for operating PMVs rather than taxicabs, many PMV operators pointed to the high cost of liability insurance as the primary driving factor. Though the explanations offered by these PMV companies for the higher taxicab premiums seems mostly anecdotal, the consensus among these operators is that it is simply too expensive for them to insure taxicabs. Consequently, many of these companies have reduced their taxicab fleets in favor of purchasing and operating more PMVs.²⁸ Other companies, who possess both PMV and taxicab certificates, argue that they have opted to operate more PMVs than taxicabs due to the higher regulatory

²⁵ Written Comments

²⁶ 3/21/13, Tr. 34-35.

²⁷ 3/21/13, Tr. 124-132.

²⁸ 8/14/13, Tr. 45, 50-51; 3/21/13, Tr. 92-93.

burden placed on taxicab operations by the State.²⁹ One PMV/Taxi certificate holder declared that his taxicab company is “not going to run just two miles or three miles for a \$4 or \$5 job. I want to get the big money job to go to the airport.”³⁰

One PMV certificate holder questioned the need to regulate the number of miles that a PMV may travel before being retired from service. He suggested that the proposed 300,000 mile limit be increased to 500,000 miles. He also questioned the regulatory reasoning for keeping scratched PMVs out of service; and for not allowing PMVs to display logos and other markings on the vehicle exterior in order to be able to link vehicles to a specific PMV company.³¹

The New England Livery Association (“NELA”), which has Rhode Island PMV certificate holders within its membership ranks, spoke in support of the proposed amended PMV Rules. It also offered, through one of its member companies, Sentinel Limousine, some suggested language modifications to the now amended PMV Rules.³²

Three of the modifications addressed a minor wording inconsistency associated with the Motor Carrier Section’s decision to amend to Rule C. Specifically, the recommended modification would change some wording in the definition of “In Service” (Rule A(15)), and in the “Waivers” section (Rule C(8)(a)), to make these provisions compatible with an amendment that was incorporated into Rule C(8).

²⁹ 3/21/13, Tr. 150-160.

³⁰ *Id.*, Tr. 151-152.

³¹ 8/14/13, Tr. 36-38.

³² 8/14/13, Tr. 21-22 and 58-68.

Sentinel Limousine and NELA also suggested that the definition of “Stretch Limousine” (Rule A(22)) be modified to replace the words “sedan or SUV” with the word “vehicle.” The language change was proposed “so that this definition will be internally consistent and not inherently self contradictory.”³³

Sentinel Limousine and NELA also suggested that Rule C(3) be modified to add language that would more accurately describe the vehicle body damage that the Division would find to be in violation of the Rules. A suggestion was made that the Division adopt a minimum dimension of 0.955 inches (the size of a 25-cent coin) as a prerequisite for determining whether any dents, dings, scratches, etc. would constitute a violation of the PMV Rules’ minimum vehicle appearance standards.

Sentinel Limousine and NELA also suggested that Rule E(2) be modified to allow the PMV certificate holder to identify to the consumer all the “vehicles” that may be used by the PMV certificate holder to provide the planned service, rather than to commit to a single specific vehicle. They reason that because “many PMV certificate holders contract for requested service days and, in fact, weeks in advance of the provision of that service, it is a practical impossibility to predetermine which of among ten (or fifteen or twenty) similar black sedans which vary by year (2010 thru 2013) and in some cases make (Lincoln, Cadillac, or Mercedes for example) will ultimately be assigned to a particular trip.”³⁴ Several other PMV certificate holders agreed with this concern.³⁵

³³ Sentinel Limousine’s Written Comments, filed on August 14, 2013.

³⁴ Sentinel Limousine’s Written Comments, filed on August 14, 2013.

³⁵ Written comments.

Lastly, Sentinel Limousine and NELA also suggested that Rule G(8) be modified to ban all smoking in PMVs. In support of this recommendation, Sentinel Limousine and NELA point to Rhode Island Department of Health rules and regulations which prohibit smoking “in all enclosed facilities within places of employment without exception.”³⁶

5. Findings

The Division appreciates the data, views and arguments that were offered by the PMV industry and the public during this rulemaking proceeding. Indeed, the record reflects that the Division’s Motor Carrier Section benefited tremendously from the comments and recommendations received in response to its initially contemplated PMV Rules. Such comments and recommendations appear to have been the singular basis for the preparation and submittal of the now amended PMV Rules presently before this hearing officer for consideration.

Before addressing the remaining areas of discord, the Division must acknowledge that significant numbers of both PMV and taxicab certificate holders in Rhode Island have voiced persuasive support for the Motor Carrier Section’s amended PMV Rules. It is obvious that many of these certificate holders believe that such Rules are overdue.

From the taxicab industry’s point of view, many PMVs are illegally operated as taxicabs (and limited public motor vehicles) by providing taxicab-like (and limited public motor vehicle-like) transportation services. Moreover,

³⁶ Id.

the taxicab industry, as well as the Motor Carrier Section, contend that many PMV certificate holders have been able to undercharge for these taxicab-like services due to a heretofore lack of statutorily imposed regulatory oversight over vehicle age and condition standards and rates. Unlike for taxicabs, there have been no minimum-quality vehicle standards required for PMVs, which has since 2002 (the year PMVs first became regulated in Rhode Island) led to an ever-growing number of old, high-mileage and aesthetically unappealing PMVs operating on our public roadways.³⁷ At the outset of PMV regulation in 2002, the expectation was that vehicle quality would not require Division oversight due to the upscale services traditionally provided by stretch limousines and black-car sedan service providers. However, this expectation was eventually dashed when the Division discovered that many taxicab companies were opting to replace their taxicabs with less-regulated and less costly PMVs, which were used to provide essentially the same transportation service once provided by their taxicab fleets.

Though many of these PMV companies justify their business model by claiming that they are better serving the low-income and middle-class customer bases, the taxicab industry argues that it is unfair for it to have to compete with carriers who are providing an indistinguishable transportation service without having to comply with the same costly regulatory standards. The taxicab certificate holders observe that between the lesser-quality vehicles being used by many PMV certificate holders and the inherently lower insurance

³⁷ See Exhibit 3.

premiums available to PMVs, the resulting ability for PMV companies to charge lower rates is having a significant detrimental impact on the taxicab industry's ability to compete.

From the "luxury" service end of the PMV industry, consisting of companies providing traditional "black car" and "limousine" services, support for the proposed amended PMV Rules primarily stems from an interest in improving the "image" of the PMV industry in Rhode Island. These PMV certificate holders universally agree that the Division must prohibit PMVs from operating like taxicabs. All agree that the "Minimum Allowable Charge" of \$40 is a reasonable way to provide delineation between PMV and taxicab services. In fact, some suggested that a higher minimum amount be adopted.³⁸ These certificate holders also support the prerequisite vehicle standards described in the amended PMV Rules.

Turning to the issues that remain in dispute, clearly, the \$40 "price floor" has generated the most passionate opposition and comment. Although only a relatively small group of PMV certificate holders are challenging this provision, the concern expressed has been considerable, based on their claim that this "price floor" requirement would devastate their businesses.

However, two facts cannot be ignored. First, there are a large number of PMVs operating like taxicabs and/or limited public motor vehicles on Rhode Island's roadways. The assertion raised by the Motor Carrier Section and the taxicab industry is that many PMVs are being used to substitute for a taxicab

³⁸ 3/21/13, Tr. 146-147.

after a prospective passenger has specifically called for a taxicab, or are being used to pick up prospective passengers at or near taxi stands. Second, the General Assembly has mandated that the Division “establish and set a minimum allowable charge for public motor vehicles services,” presumably to curtail PMVs from operating in lockstep with taxicabs and limited public motor vehicles.³⁹

The outspoken PMV certificate holders arguing in favor of maintaining the status quo would have the Division completely ignore the above-described reality, which, of course, the Division cannot. The Division accepts that PMV service must be distinguishable from taxicab and limited public motor vehicle services; a reading and comparison analysis of Rhode Island General Laws, Chapters 14 (taxicab and LPMV) and 14.1 (PMV) makes this clear. The most obvious evidence of this is contained in the definition of a PMV, which is defined as “every motor vehicle for hire, other than a jitney, as defined in §39-13-1, or a taxicab or limited public motor vehicle, as defined in §39-14-1....”

The Division also accepts that PMV authority, as contemplated in R.I.G.L. Chapter 14.1, is to be a more upscale or “premium” mode of “for-hire” transportation, recognizably different from taxicab and LPMV-type transportation services. For example, the law requires that all PMVs be “unmarked” (even though one PMV certificate holder criticized the Division for not allowing PMVs to display logos and other markings on the vehicle exterior that would make the vehicle recognizable as belonging to a specific PMV

³⁹ R.I.G.L. §39-14.1-6.

company). The law makes it clear that “unmarked” means no “display [of] the transportation company’s name, address or phone number, or advertisements or commercial information beyond that included by the vehicle’s manufacturer on the vehicle’s exterior services.”⁴⁰

The General Assembly has also required that PMV certificate holders provide a prospective customer/passenger with “a predetermined or prearranged rate,” for the vehicle to be used for the requested transportation service. This requirement insinuates that the passenger is contracting for the use of a better-quality PMV vehicle (and driver) for an interval of time, rather than for a transportation service over a distance of miles and fractions of miles, which may include additional charges for “waiting time,” as is the case with taxicabs and LPMVs.

The Division also observes that the minimum insurance coverage requirement for PMVs far exceeds the requirements for taxicabs and LPMVs, further evidencing the General Assembly’s intent to distinguish PMV service from taxicab and LMPV services. PMV certificate holders are required to carry a “policy to provide for the indemnity in the sum of ... \$1,500,000 ... for personal injury and indemnity of not less than... \$100,000 ... for damage to property.”⁴¹ In contrast, taxicabs and LPMVs are required “to provide for the indemnity in the sum of not less than... \$300,000 ... combined single limit, or ... \$250,000 ... per person... \$500,000 ... per accident bodily injury and ...

⁴⁰ R.I.G.L. §39-14.1-1(8).

⁴¹ R.I.G.L. §39-14.1-7.

\$100,000 ... property damage split limit.”⁴² The Division finds these disparate minimum insurance requirements indicative of expected disparate types of transportation services offered by PMVs and taxicabs and LMPVs; the higher coverage limits naturally correspond to the larger number of passengers typically being carried in PMVs (i.e., limousines, coaches, etc.). This may also explain why insurance premiums are more expensive for taxicabs and LMPVs than for PMVs, as conveyed by some certificate holders during the hearing. Perhaps it is due to the anticipated fewer starts and stops, longer down time (vehicle parked) and more highway vs. city miles expected to be driven by PMVs.

After a thorough examination of the law, the Division finds that a “price floor” (“minimum allowable charge”) is unambiguously mandated. Therefore, the only issue for consideration is the propriety of the \$40 “price floor” recommended by the Motor Carrier Section. Based on the totality of the record evidence, the Division agrees that the establishment of a \$40 “minimum allowable charge” would provide a reasonable barrier to PMVs operating in a fashion inconsistent with the operating parameters authorized in R.I.G.L. Chapter 39-14.1. The Division also agrees with the Motor Carrier Section’s endorsement for the use of LPMV authority as an alternative to the improper use of PMV authority currently being witnessed. For those PMV certificate holders who believe that they would not be able to coexist with other PMV companies operating under the prescribed \$40 minimum allowable charge, the

⁴² R.I.G.L. §39-14-18.

Division would similarly encourage them to file an application with the Division for LPMV authority.

Next, with respect to the several modifications proposed by Sentinel Limousine and NELA, Mr. Mercer supported the three modifications to correct a minor wording inconsistency associated with amended Rule C.⁴³ Specifically, the recommended modification would change some wording in the definition of “In Service” (Rule A(15)), and in the “Waivers” section (Rule C(8)(a)), to make these provisions compatible with an amendment that was incorporated into Rule C(8). The Division agrees that these recommended modifications are appropriate and will accordingly incorporate the changes into the final PMV Rules.

Mr. Mercer also supported Sentinel Limousine’s and NELA’s reasoning for modifying the definition of “Stretch Limousine,” and, in fact, went a step further by agreeing to strike the definition from the PMV Rules altogether.⁴⁴ The Division would agree that in view of the amendments made to the originally submitted PMV Rules, that this definition is no longer necessary. This change, too, will be incorporated into the final PMV Rules.

Mr. Mercer offered no objection to Sentinel Limousine’s and NELA’s recommendation that Rule E(2) be modified to allow the PMV certificate holder to identify to the consumer all the “vehicles” that may be used by the PMV certificate holder to provide the planned service, rather than to commit to a single specific vehicle. The Division finds the explanation offered by Sentinel

⁴³ 8/14/13, Tr. 59.

⁴⁴ 8/14/13, Tr. 60-61.

Limousine and NELA to be reasonable, and will accordingly incorporate the change into the final PMV Rules.

Similarly, Mr. Mercer offered no objection to Sentinel Limousine's and NELA's recommendation that Rule G(8) be modified to ban all smoking in PMVs. The Division has considered the legal argument offered regarding the Rhode Island Department of Health's ("RIDOH") prohibition against smoking in the workplace, and finds the argument sound. After reviewing the applicable RIDOH Rule, the Division would agree that the inside of a PMV should be considered "a place of employment" in the context of the prohibition. Accordingly, the Division shall incorporate the change into the final PMV Rules.

Finally, with respect to Sentinel Limousine's and NELA's recommendation that Rule C(3) be modified to adopt a minimum dimension of 0.955 inches for purposes of determining whether vehicle body damage would be considered in violation of the Rules, the Division agrees with Mr. Mercer's assertion that the Motor Carrier Section's inspectors ought to be permitted the freedom to consider the totality of the vehicle's condition in determining whether to find a violation. He argued that adopting such a standard could lead to "automatically disqualifying a vehicle" when such a finding may not be necessary, or, conversely, not being able to disqualify a vehicle when, for example, windshield damage may warrant such a disqualification.⁴⁵ The Division agrees that the language currently contained in the amended PMV Rules is reasonable.

⁴⁵ 8/14/13, Tr. 72.

The Division will next address the suggestion by one PMV certificate holder that the phrase “pre-arranged-solicitation,” as used in the definition of “Call and Demand,” not be interpreted to require “wait-time for the vehicle arrival.” In short, he believes that “if the passenger is ready now, and if the vehicle were present at their location, they would [be able to] hire the vehicle.” This certificate holder proffered a copy of a 1994 Division-issued “Declaratory Ruling,” which purports to support his opinion.⁴⁶

In response to the foregoing assertion, the Division observes that the 1994 Declaratory Judgment offered in support of this certificate holder’s position predates the 2002 enactment of Rhode Island’s PMV laws (R.I.G.L. Chapter 39-14.1) by eight (8) years. Simply stated, the legal analysis put forth in that Declaratory Judgment has no bearing on the State’s subsequent decision to regulate PMVs. Under the current law, PMVs are prohibited from performing the transportation services described in the scenario offered by this PMV certificate holder. “Prearranged” does not include a chance meeting on the street; nor are PMVs authorized to operate like taxicabs.⁴⁷

A few individuals and at least one PMV certificate holder challenged the statement contained in the “Notice of Rulemaking and Public Hearing” that was published in docket, which declared PMV companies are not “considered small businesses.” While it may be true that PMV companies may be “small businesses” in business-speak and common parlance, the statement in issue is being offered exclusively in a narrow “legal” context. Under R.I.G.L. §42-35-3.3,

⁴⁶ 8/14/13, Tr. 22-24.

⁴⁷ See R.I.G.L. §§39-14.1-1 (7) and 39-14.1-6.

state agencies are required to provide special notices, and sometimes special analyses, before promulgating rules that may have “a significant adverse economic impact on small businesses.” However, “public utilities” are specifically excluded from the definition of a “small business” for purposes of R.I.G.L. §42-35-3.3’s applicability to the rulemaking process (R.I.G.L. §42-35-3.3(7)). Accordingly, as PMVs, taxicabs and LMPVs are all considered “public utilities” under R.I.G.L. §39-1-2(7) and (20), the Motor Carrier Section (and Division) were correct to not characterize PMVs as “small businesses” for purposes of conducting the instant rulemaking.

One PMV certificate holder also questioned why the Division does not prohibit out-of-state limousine companies from doing business in Rhode Island.⁴⁸ Without getting into the obvious Constitutional implications, suffice it to say, that if an out-of-state PMV company satisfies the State’s licensing and operations requirements (statutes, rules and regulations), the Division is compelled to permit that company to provide point-to-point PMV services in Rhode Island.

One PMV certificate holder questioned the need to regulate the number of miles that a PMV may travel before being retired from service. He urged the Division to adopt a 500,000 mile limit instead of the proposed 300,000 mile limit contained in the amended PMV Rules. He also questioned the regulatory reasoning for keeping scratched and dented PMVs out of service; and for not allowing PMVs to display logos and other markings on the vehicle exterior in

⁴⁸ 8/14/13, Tr. 26-35 and 42-53.

order to be able to link vehicles to a specific PMV company.⁴⁹ Not surprisingly, this PMV certificate holder also strenuously attacked the \$40 price floor; and he further argued that it would be anticompetitive for the Division to deny his company the ability to compete along-side taxicabs.

Other PMV certificate holders echoed that a \$40 minimum charge would put them and their drivers out of business. The record reflects that one PMV certificate holder charges \$5 for some services and regularly between \$8 and \$10 for most others.⁵⁰ Several individuals asserted that it would be anticompetitive to prohibit PMVs from competing with taxicabs for the short-distance trips.⁵¹

The record further reflects that many PMV operators attribute the high cost of liability insurance as the primary reason for their decision operate PMVs rather than taxicabs.⁵² Other companies, who possess both PMV and taxicab certificates, argue that they have opted to operate more PMVs than taxicabs due to the higher regulatory burden placed on taxicab operations by the State.⁵³

Interestingly, by combining all the above concerns and recommendations, a clear picture emerges of precisely the type of PMV business model that the General Assembly (and the Motor Carrier Section) intends to bring to an end. Clearly, this PMV business model supports the use

⁴⁹ 8/14/13, Tr. 36-38.

⁵⁰ 3/21/13, Tr. 34-35.

⁵¹ 3/21/13, Tr. 124-132.

⁵² 8/14/13, Tr. 45, 50-51; 3/21/13, Tr. 92-93.

⁵³ 3/21/13, Tr. 150-160.

of less costly old and unsightly vehicles, identifiable to the PMV company (for free advertising purposes), that would directly compete against newer and cleaner taxicabs (as required by existing law), by undercharging for identical transportation services. The Division agrees with the Motor Carrier Section's assertion that this PMV business model is inconsistent with existing law and not a valid manner of competition. The Division also agrees that if this PMV business model is permitted to continue and expand, it would seriously and perhaps irreparably damage a much needed and crucial taxicab industry in Rhode Island. The Division finds that such a business rivalry is inequitable and inimical to the public interest.

In conclusion, the Division finds the proposed amended PMV Rules, as modified through the findings contained herein, to be reasonable and in conformance with relevant statutory mandates.

Now, therefore, it is

(21192) ORDERED:

1. That predicated upon and modified by the findings contained herein, the Division hereby adopts the "Rules and Regulations Governing the Transportation of Passengers via Public Motor Vehicles," as reflected in "Appendix 2" to this report and order.
2. That "Appendix 1" and "Appendix 2" are hereby incorporated by reference.
3. That the Division's Rules Coordinator is hereby instructed to file a certified copy of the attached "Rules and Regulations Governing the

Transportation of Passengers via Public Motor Vehicles” (Appendix 2) with the Rhode Island Secretary of State as soon as practicable, and also to fully comply with the filing requirements contained in R.I.G.L. §42-35-3.1 and §42-35-4. The Division will endeavor to file the instant Rules with the Rhode Island Secretary of State on or before October 18, 2013 in order to facilitate an effective date of November 11, 2013.

4. That the newly amended “Rules and Regulations Governing the Transportation of Passengers via Public Motor Vehicles” shall take effect on November 11, 2013.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON OCTOBER 15, 2013.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator