

# STATEMENTS OF POLICY

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 41 ]

[ M-2011-2188361 ]

#### Scope of Commission Jurisdiction Over Passenger Transportation Services Provided or Administered by Municipal Corporations and Instrumentalities of the State

The Pennsylvania Public Utility Commission (Commission), on March 14, 2013, adopted a final policy statement which clarifies the exceptions to Commission jurisdiction for municipal corporations and instrumentalities of the State.

Public Meeting held  
March 14, 2013

*Commissioners Present:* Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

*Statement of Policy Regarding the Scope of Commission Jurisdiction Over Passenger Transportation Services Provided or Administered by Municipal Corporations, Municipal Authorities and Instrumentalities of the State;*  
*Doc. No. M-2011-2188361*

#### Final Policy Statement Order

*By the Commission:*

##### I. Background

By order entered March 18, 2011, at the above-captioned docket, the Pennsylvania Public Utility Commission (Commission or PUC) issued a proposed policy statement (Proposed Policy Statement) addressing the scope of the Commission's jurisdiction over passenger transportation services provided by municipal corporations and instrumentalities of the state. The Proposed Policy Statement and accompanying notice requesting comments from interested parties were published July 16, 2011, at 41 Pa.B. 3863. The Commission received comments from the Pennsylvania Department of Transportation (PennDOT), York Adams Transportation Authority (YATA), Barker Brothers t/d/b/a Pittsburgh North Aire Ride (Barker Brothers), and Mid Mon Valley Transit Authority (MMVTA). This Order addresses the comments received and sets forth a final policy statement (Final Policy Statement) addressing the scope of the Commission's jurisdiction over passenger transportation services provided by municipal corporations, municipal authorities and instrumentalities of the state.

##### II. Comments

###### A. PennDOT

First, PennDOT comments that the term "municipal authority" was not included in the Proposed Policy Statement. In *88 Transit Lines, Inc. v. Mid Mon Valley Transit Authority*, Docket No. C-2009-211669 (Order entered February 25, 2011), we recognized that there is a legal distinction between municipal corporations and municipal authorities in terms of enabling legislation and geographic limits. Accordingly, although not included in our

Proposed Policy Statement, we will address the scope of the Commission's jurisdiction with respect to passenger transportation service provided by municipal authorities in the Final Policy Statement.

By way of background, the Public Utility Code provides that only a "person" or a "corporation" can qualify as a "public utility." 66 Pa.C.S. § 102. A "person," by definition, includes "[i]ndividuals, partnerships, or associations other than corporations, and includes their lessees, assignees, trustees, receivers, executors, administrators, or other successors in interest." *Id.* A "corporation," by definition includes:

"[a]ll bodies corporate, joint-stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, *but shall not include municipal corporations, except as otherwise expressly provided in this part, nor bona fide cooperative associations which furnish service on a nonprofit basis only to their stockholders or members.*" *Id.* (emphasis added).

Significantly, "municipal corporations" are explicitly excluded from the definition of "corporation," unless otherwise provided in the Public Utility Code. *Id.* Sections 1102(a)(5), 1301 and 1501 of the Public Utility Code provide circumstances when a "municipal corporation" is considered a "corporation" and thus a "public utility" subject to the Commission's jurisdiction. These sections provide that public utility service provided by a "municipal corporation" beyond its corporate limits is subject to the Commission's jurisdiction.<sup>1</sup> 66 Pa.C.S. §§ 1102(a)(5), 1301 and 1501.

The Public Utility Code includes municipal authorities within the definition of "municipal corporations." 66 Pa.C.S. § 102. Section 102 defines "municipal corporation" as "[a]ll cities, boroughs, towns, townships or counties of this Commonwealth, and also any public corporation, *authority*, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility." 66 Pa.C.S. § 102 (emphasis added).

While "municipal authorities" fall within the definition of "municipal corporation" under the Public Utility Code, the courts and the Commission have treated these entities differently when applying geographic restrictions related to providing passenger transportation service. Passenger transportation service provided by municipal corporations is not subject to Commission jurisdiction if the service is provided within a municipal corporation's geographic limits.<sup>2</sup> Proposed Policy Statement at 8. As such, any service provided by a municipal corporation to non-residents beyond its municipal boundaries would be subject to the jurisdiction of the Commission.

<sup>1</sup> Section 1301 specifically provides that public utility service provided by a "municipal corporation," or by its operating agencies, beyond its corporate limits, is subject to the Commission's jurisdiction. 66 Pa.C.S. § 1301. The "operating agencies" referred to in this section do not include third party agents. Rather, the "operating agencies" language refers to agencies of the municipality itself, which include, but are not limited to municipal planning commissions and parks and recreation boards. See generally 53 P. S. §§ 2322, 2324(a)(5), 2327 and 3076(b).

<sup>2</sup> The Commonwealth Court has held that this geographic requirement will be satisfied as long as the service provided by a municipal corporation is restricted to residents of the municipality, regardless of whether the actual service is provided within the corporate limits of the municipality. *County of Dauphin v. Pa. Pub. Util. Comm'n*, 634 A.2d 281, 283 (Pa. Cmwlth. 1993).

Unlike municipal corporations, the Commonwealth Court of Pennsylvania (Commonwealth Court) has consistently found that the Commission has no jurisdiction to regulate municipal authorities, regardless of geographic considerations. *White Rock Sewage Corp. v. Pa. Pub. Util. Comm'n.*, 578 A.2d 984 (Pa. Cmwlth. 1990); *Garver v. Pa. Pub. Util. Comm'n.*, 469 A.2d 1154 (Pa. Cmwlth. 1984). The Commonwealth Court has permitted municipal authorities to provide service throughout the Commonwealth without falling within the scope of the Commission's jurisdiction because "[m]unicipal authorities are not creatures, agents or representatives of municipalities which organize them, but rather are independent agencies of the Commonwealth and a part of its sovereignty." *White Rock Sewage Corp.*, 578 A.2d at 987. "Furthermore, a municipal authority organized pursuant to the Municipal Authorities Act (53 P.S. § 303 et seq.) is a corporate agency of the Commonwealth of Pennsylvania, created by the Commonwealth. It is not a creature, agent, or representative of the municipality which organized such authority." In Re: Application of Rheems Water Company, 1992 Pa. PUC LEXIS 50, at \*10-11; citing *Re: Municipal Authority of Township of Upper St. Clair*, 184 A.2d 695 (Pa. 1962) & *Highland Sewer and Water Authority v. Engelback*, 220 A.2d 390 (Pa. Super. 1966).

Similarly, in *88 Transit Lines, Inc. v. Mid Mon Valley Transit Authority*, Docket No. C-2009-211669 (Order entered February 25, 2011), we recognized that the Commission does not have jurisdiction over passenger transportation services provided by municipal authorities, even when such service extends beyond the municipality's limits. In *Mid Mon*, the Commission specifically recognized that municipal authorities are "independent agencies of the Commonwealth and part of its sovereignty." Id. at \*7; citing In Re: Application of Rheems Water Company, 1992 Pa. PUC LEXIS at \*10-11. They are "not a creature, agent, or representative of the municipality which organized such authority." Id.

Given the Commission's lack of jurisdiction over municipal authorities, the geographic considerations relevant to determining whether service provided by a municipal corporation is subject to the Commission's jurisdiction have no relevance to determining whether the Commission has jurisdiction over service provided by a municipal authority. Accordingly, unless otherwise limited by the ordinance which organized it or by its articles of incorporation, a municipal authority may provide passenger transportation service, unrestricted by geographic boundaries throughout the Commonwealth, without obtaining a certificate of public convenience from the Commission. Further, as we have set forth in Section 41.22(d) of the Final Policy Statement, services provided by the contractors and subcontractors of municipal authorities and municipal corporations will be considered non-jurisdictional as long as such services (1) would be non-jurisdictional if provided by the municipal authority or corporation itself and (2) are subject to the substantial or pervasive, ongoing control of the contracting municipal authority or corporation. Proposed Policy Statement at 8; see also *Brocal Corporation v. Wheels, Inc. (Brocal I)*, 57 Pa. P.U.C. 322 (1983).

PennDOT's second and fourth comments are closely related to its first comment, in that PennDOT points out that Section 41.22(d) (relating to exemptions from the Commission's jurisdiction for services provided by third parties) of the Proposed Policy Statement appears to apply only to "municipal corporations," but does not mention "municipal authorities" or "instrumentalities of the state." First, we note that we have set forth the scope

of the Commission's jurisdiction with respect to third parties providing service under contract with municipal authorities under Section 41.22(d) above and have revised the Final Policy Statement accordingly. Second, although we addressed the scope of the Commission's jurisdiction over passenger transportation services provided by third parties under contract with state instrumentalities in the Proposed Policy Statement, we believe that it is appropriate to revisit this issue at this time.

By way of background, in *Commonwealth v. Merritt-Chapman & Scott Corporation*, 248 A.2d 194 (Pa. 1968), the Supreme Court of Pennsylvania (Supreme Court) determined that a state instrumentality cannot, by definition, be a "public utility" under the Public Utility Code. The specific issue in *Merritt-Chapman* involved whether a third party under contract with the Pennsylvania Turnpike Commission was entitled to an exclusion from the sales and use tax provided for property used in "public utility service." In resolving this issue, the Supreme Court found that the Turnpike Commission could only be considered a "public utility"<sup>3</sup> under the Public Utility Code (Code) if it is a "person" or "corporation," as defined by the Code.<sup>4</sup> The Supreme Court found that the Turnpike Commission, an agency of the Commonwealth, is not a "person" or "corporation," as defined by the Code, and therefore could not be a "public utility." Id. at 196. Because the Turnpike Commission and similar state instrumentalities cannot be "public utilities" under the Code, the third party providing service under contract with the Turnpike Commission was not entitled to a tax exclusion for property used in "public utility service." Id.

Significantly, the Supreme Court noted in its decision that a municipal corporation is also explicitly barred from being a public utility by being excluded from the definition of "corporation" in 66 Pa.C.S. § 102.<sup>5</sup> Id. In circumstances when a municipal corporation or municipal authority is acting beyond the Commission's jurisdiction, and therefore is not, by definition, a public utility, the Commission has allowed a municipal corporation and a municipal authority to contract with third parties and has determined that the service provided by such third party is also beyond the scope of the Commission's jurisdiction.<sup>6</sup> Because the Commission has specifically exempted service provided by third parties under contract with municipal corporations and municipal authorities, when acting as non-public utilities, it is proper to exempt service provided by the contractors and subcontractors of state instrumentalities, non-public utilities.<sup>7</sup>

This determination is consistent with our holding in *88 Transit Lines, Inc. v. Mid Mon Valley Transit Authority*, Docket No. C-2009-2116699 (Order entered February 25, 2011), where we found that passenger transportation services provided by third parties under contract with

<sup>3</sup> The Public Utility Code defines "public utility" as "[a]ny person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities. . . ." 66 Pa.C.S. § 102(1).

<sup>4</sup> The Public Utility Code defines "person" as "[i]ndividuals, partnerships, or associations other than corporations, and includes their lessees, assignees, trustees, receivers, executors, administrators, or other successors in interest." 66 Pa.C.S. § 102. The Public Utility Code defines "corporation" as "[a]ll bodies corporate, joint-stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations, except as otherwise expressly provided in this part, nor bona fide cooperative associations which furnish service on a nonprofit basis only to their stockholders or members." Id.

<sup>5</sup> The Supreme Court did not address the limited circumstances when a municipal corporation is a public utility, as discussed *infra* regarding service beyond the municipality's geographic boundaries.

<sup>6</sup> As previously noted, the extension of this exemption from the Commission's jurisdiction is only available when certain conditions are satisfied.

<sup>7</sup> We note that municipal corporations, municipal authorities and state instrumentalities may not obtain certificates of public convenience from the Commission for the purpose of passing such authority obtained by the certificate onto their contractors and/or subcontractors.

municipal authorities are exempt from the Commission's jurisdiction. In *Mid Mon*, the Commission specifically recognized that municipal authorities are "independent agencies of the Commonwealth and part of its sovereignty." *Id.* at \*7; citing *In Re: Application of Rheems Water Company*, 1992 Pa. PUC LEXIS at \*10-11. They are "not a creature, agent, or representative of the municipality which organized such authority." *Id.* Accordingly, the Commission effectively determined that municipal authorities are analogous to state instrumentalities because both entities, which are essentially agents of the Commonwealth, are entitled to provide passenger transportation service throughout the Commonwealth without obtaining a certificate of public convenience from the Commission.

Because municipal authorities and state instrumentalities are similarly situated as non-public utilities without geographic restrictions, the Commission should treat the services provided by third parties under contract with municipal authorities and state instrumentalities similarly. As such, service provided by third parties under contract with both municipal authorities and state instrumentalities should be exempt from the Commission's jurisdiction. To do otherwise would result in inconsistent certification requirements for service provided by third parties under contract with similar entities, both of which are agents of the Commonwealth.

This determination is also consistent with *Brocal Corporation v. Pennsylvania Public Utility Commission (Brocal II)*, 61 Pa. PUC 518 (1986) at \*4, stating that similar principals should apply to "all exempt entities," including municipal authorities, instrumentalities of the state and municipal corporations providing service within their corporate limits. In *Brocal II*, we found that passenger transportation services provided by the contractors and subcontractors of state instrumentalities are exempt from the Commission's jurisdiction as long as the state instrumentality maintained the requisite degree of control over such third party. *Id.* The Commission specifically found that in instances such as this, "PUC regulation can be effectively replaced with the ongoing control of the [state] agency." *Id.*; see also *Brocal Corp. (Brocal I)*, 57 Pa. P.U.C. 322.

While the Commission in *Pennsylvania Public Utility Commission v. A.J. Myers & Sons, Inc.*, Docket No. A-00106393C892 (Order entered December 5, 1991), determined that passenger transportation services provided by the contractors and subcontractors of state instrumentalities are not exempt from the Commission's jurisdiction, we reject this holding. In *A.J. Myers*, the Commission reasoned that it alone has the statutory responsibility to regulate public utility service and that no degree of control exercised by the state instrumentality over service provided by its contractors or subcontractors would suffice to replace the Commission's regulatory responsibilities. *Id.* However, the Commission did not extend this same rationale to services provided by the contractors and subcontractors of municipal corporations and municipal authorities. Therefore, *A.J. Myers* promoted an inconsistent result where the Commission exempted from its jurisdiction service provided by third parties under contract with municipal corporations and municipal authorities, while it subjected to its jurisdiction service provided by third parties under contract with state instrumentalities.

In reconciling the Supreme Court's ruling in *Merritt-Chapman* with the Commission's findings in *A.J. Myers* and *Mid Mon Valley Transit Authority*, we find that

passenger transportation services provided by the contractors and subcontractors of state instrumentalities are exempt from the Commission's jurisdiction where: (1) the state instrumentality's enabling legislation does not specifically require the third party to obtain a certificate of public convenience from the Commission when providing such service; and (2) the service is subject to the substantial ongoing control of the state instrumentality, in regards to rates, routes, schedules, passenger eligibility, and other terms and conditions of service. *Brocal Corp. (Brocal II)*, 61 Pa. PUC 518; *Brocal Corp. (Brocal I)*, 57 Pa. P.U.C. 322. We have revised Section 41.22(d) of the Final Policy Statement accordingly.

PennDOT's third comment points out that courts have held that some public transportation authorities operating within the Commonwealth do not operate under the Municipal Authorities Act of 2001, 53 Pa.C.S. § 5601 et seq., or its predecessor statutes. Specifically, the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Port Authority of Allegheny County (PAAC) have their own enabling legislation. PennDOT asks that if the enabling legislation for a public transportation authority exempts it from the Commission's jurisdiction, that the Final Policy Statement be drafted to exclude passenger transportation services provided by those authorities.

The intent of the Final Policy Statement is to clarify those situations where passenger transportation services are provided through third parties under contract either with a municipal corporation, municipal authority or a state instrumentality. For instance, many counties offer what are known as "shared-ride" or medical assistance transportation services.<sup>8</sup> These services receive funding through programs administered by PennDOT and the Pennsylvania Department of Public Welfare (DPW). Some of these services are provided directly by employees and vehicles of a municipality. However, it is also common for a municipality to contract with a third party to provide these services.

The regulatory issue presented by these third-party arrangements is whether, and under what conditions, the Commission's jurisdiction extends to service provided by the third party. This includes the extent to which these services are considered to be extra-territorial. In instances where the enabling legislation exempts a public transportation authority from Commission jurisdiction (SEPTA or PAAC), we agree that there is no confusion as to whether the Commission has jurisdiction. Similarly, passenger services provided by third parties under contract to entities such as SEPTA and PAAC should also enjoy this exemption from the Commission's jurisdiction. Therefore, as set forth in Section 41.22(d) of the Final Policy Statement, we have determined that where a public transportation authority's enabling legislation exempts it from the Commission's jurisdiction, third parties under contract to such a transportation authority will also be exempt from the Commission's jurisdiction as long as (1) the transportation authority's enabling legislation expressly authorizes it to contract with contractors and subcontractors to provide passenger transportation service and (2) the service is subject to the substantial

<sup>8</sup> A shared-ride program is defined as "Demand-responsive transportation that is available to the general public, operates on a nonfixed route basis and charges a fare to all riders. For transportation to be included in this definition, the first fare-paying passengers to enter the public transportation vehicle must not refuse to share the vehicle with other passengers during a given trip. The term excludes exclusive-ride taxi service, charter and sightseeing services, nonpublic transportation, school bus and limousine services." 72 P. S. § 3761-901.



ongoing control of the contracting transportation authority, in regards to rates, routes, schedules, passenger eligibility, and other terms and conditions of service.<sup>9</sup> *Brocal Corp. (Brocal I)*, 57 Pa. PUC. 322 at \*7-8.

PennDOT's fifth and final comment asks the Commission to consider including in the Final Policy Statement language pertaining to cooperative agreements between municipal corporations or authorities, which permit them to operate in each other's geographic service areas. PennDOT states that because the public transportation service provided by either contracting party separately would not be subject to Commission jurisdiction, then the same service provided under a cooperative agreement should likewise be exempt. We agree that under circumstances such as this, such services should also be exempt. The Commission has further determined that third parties providing passenger transportation service under contract to a contracting municipal corporation and/or authority, providing service by cooperative agreement, are likewise exempt from the Commission's jurisdiction as long as the services provided are subject to the substantial or pervasive ongoing control of the contracting municipal cooperation and/or authority, in regards to rates, routes, schedules, passenger eligibility, and other terms and conditions of service. We have revised Section 41.22(d) of the Final Policy Statement accordingly.

#### B. York Adams Transportation Authority

YATA first comments that passenger transportation services provided by municipal authorities should be exempt from Commission jurisdiction. YATA argues that this should include situations where the municipal authority is acting as an authorized agent of a municipal corporation outside the founding corporation's limits. Initially, as previously set forth, we note that passenger transportation services provided by municipal authorities are exempt from the Commission's jurisdiction even when service is provided beyond the geographic limits of the municipality that created the authority. This would include a situation where a municipal authority is acting as an authorized agent of a municipal corporation. Because the service provided by the municipal authority, regardless of geographic location within the Commonwealth, would be separately exempt from the Commission's jurisdiction, services provided by a municipal authority acting as an authorized agent for a municipal corporation, outside of the corporation's limits, would likewise be exempt.

In addition to requesting that services provided by municipal authorities be exempt from the Commission's jurisdiction in certain situations, YATA seems to suggest that passenger transportation services provided by municipal corporations or municipal authorities under direct contract with instrumentalities of the state should also be exempt.<sup>10</sup> As previously set forth, passenger transportation service provided by municipal authorities and municipal corporations within their corporate limits is exempt from the Commission's jurisdiction. Accordingly, when the passenger transportation service provided by the municipal corporation or municipal authority is separately exempt from the Commission's jurisdiction, the

<sup>9</sup> In *Brocal I*, SEPTA clearly had the power to contract with carriers to provide service as SEPTA is expressly authorized to "lease property or contract for service, including, managerial and operating service, when it can more efficiently and effectively serve the public by so doing, rather than conducting its own operations with its own property." *Brocal Corp.*, 57 Pa. P.U.C. 322 at \*7; citing 55 P.S. § 600.3.3(23). The record in *Brocal I* also revealed that SEPTA exercised "pervasive control over the service and rates of its contractor and subcontractor." *Id.*

<sup>10</sup> We note that YATA seems to classify a county as a "state instrumentality." We note that a county does not fall within the definition of "state instrumentality" as set forth in the Final Policy Statement below.

same service provided by the municipal corporation or municipal authority under contract with a state instrumentality is likewise exempt.

YATA also asks the Commission to consider including in the Final Policy Statement language pertaining to cooperative agreements between municipal corporations or authorities, which permit them to operate in each other's geographic service areas. We have previously set forth our disposition regarding cooperative agreements in our response to PennDOT's fifth comment above and have revised Section 41.22(d) of the Final Policy Statement accordingly.

#### C. Barker Brothers t/d/b/a Pittsburgh North Aire Ride

Barker Brothers comments that the Commission should consider revising the Proposed Policy Statement to include confirmation that transportation services provided by the subcontractors of municipal corporations, municipal authorities and instrumentalities of the state are also subject to an exemption from the Commission's jurisdiction as set forth in Section 41.22(d) of the Proposed Policy Statement. We note that we have previously addressed this issue, *infra*, and have revised Section 41.22(d) of the Final Policy Statement accordingly.

#### D. Mid Mon Valley Transit Authority

In their comments, MMVTA requests that the Commission specifically reference the legal distinction between "municipal corporations" and "municipal authorities" as set forth in *88 Transit Lines, Inc. v. Mid Mon Valley Transit Authority*, Docket No. C-2009-211669 (Order entered February 25, 2011). We have previously discussed such legal distinction, *infra*.

### III. Summary of Commission Jurisdiction

#### A. Municipal Corporations

The Public Utility Code and relevant precedent state that passenger transportation service provided directly by municipal corporations will not be subject to the Commission's jurisdiction as long as such service is provided within a municipal corporation's geographic limits. The Commonwealth Court has held that this statutory geographic requirement is satisfied as long as the service provided by a municipal corporation is restricted to residents of the municipality, regardless of whether the actual service is provided within the corporate limits of the municipality. *County of Dauphin v. Pa. Pub. Util. Comm'n*, 634 A.2d 281, 283 (Pa. Cmwlth. Ct. 1993). Therefore, municipal corporations are not subject to the Commission's jurisdiction as long as they are directly providing passenger transportation service only to residents of the municipality or within their geographic boundaries.

Municipal corporations sometimes contract with third parties to provide passenger transportation services. These third party services, including services provided by both contractors and subcontractors of municipal corporations, are also non-jurisdictional so long as such services (1) would be non-jurisdictional if provided by the municipal corporation itself and (2) are subject to the substantial or pervasive, ongoing control of the contracting municipal corporation. See generally, *Brocal Corp.*, 57 Pa. PUC 322.

#### B. Municipal Authorities

The courts and the Commission have found that unless otherwise limited by the ordinance which organized it or by its articles of incorporation, a municipal authority may provide passenger transportation service, unrestricted by

geographic boundaries throughout the Commonwealth, without obtaining a certificate of public convenience from the Commission. Municipal authorities also contract with third parties to provide passenger transportation services. Passenger transportation services provided by the contractors and subcontractors of municipal authorities will also not be subject to the Commission's jurisdiction as long as such services (1) would be non-jurisdictional if provided by the municipal authority itself and (2) are subject to the substantial or pervasive, ongoing control of the contracting municipal authority. See generally, *Brocal Corp.*, 57 Pa. PUC 322.

#### C. Instrumentalities of the State

The Commission's jurisdiction does not extend to passenger transportation service provided by state instrumentalities. *Merritt-Chapman & Scott Corp.*, 248 A.2d 194. Similarly, passenger transportation services provided by the contractors and subcontractors of state instrumentalities are also exempt from the Commission's jurisdiction where (1) the state instrumentality's enabling legislation does not specifically require the third party to obtain a certificate of public convenience from the Commission when providing such service and (2) the service is subject to the substantial ongoing control of the state instrumentality, in regards to rates, routes, schedules, passenger eligibility, and other terms and conditions of service.

#### D. Public Transportation Authorities

Where a public transportation authority's enabling legislation exempts it from the Commission's jurisdiction, service provided by third parties under contract to such transportation authority will also be exempt from the Commission's jurisdiction as long as (1) the transportation authority's enabling legislation expressly authorizes it to contract with contractors and subcontractors to provide passenger transportation services and (2) the service is subject to the substantial ongoing control of the contracting transportation authority, in regards to rates, routes, schedules, passenger eligibility, and other terms and conditions of service.

#### E. Cooperative Agreements

Services provided under a cooperative agreement between municipal corporations or authorities, which permit them to operate in each other's geographic service areas, are not subject to the Commission's jurisdiction. Similarly, passenger transportation services provided by third parties under contract to such contracting municipal corporation and/or authority are likewise exempt from the Commission's jurisdiction as long as the services provided are subject to the substantial or pervasive ongoing control of the contracting municipal cooperation and/or authority, in regards to rates, routes, schedules, passenger eligibility, and other terms and conditions of service.

#### IV. Conclusion

Based on the foregoing discussion, we will adopt the Final Policy Statement to assist municipal corporations, municipal authorities, common carriers, other state agencies and members of the public in determining when our jurisdiction is implicated.

Accordingly, pursuant to its authority under Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission adopts the attached Final Policy Statement; *Therefore,*

#### *It Is Ordered That:*

1. The regulations of the Commission, 52 Pa. Code Chapter 41, are amended by adding § 41.22 to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. A copy of this Final Policy Statement and Annex A shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate and all commentators, and be posted on the Commission's website at [www.puc.state.pa.us](http://www.puc.state.pa.us).

5. The contact person for this matter is Krystle J. Sacavage, (717) 787-5262, Law Bureau (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** Fiscal Note 57-284 remains valid for the final adoption of the subject regulation.

#### Annex A

#### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

#### Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

#### CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND GUIDELINES ON TRANSPORTATION UTILITIES

#### TRANSPORTATION

#### § 41.22. Motor carrier passenger transportation services by municipal corporations or State instrumentalities—statement of policy.

(a) *General rule.* As a general rule, passenger transportation services are not subject to Commission jurisdiction when provided by any of the following:

- (1) State instrumentalities.
- (2) Municipal authorities.

(3) Municipal corporations within their corporate limits. The geographic limitation applicable to municipal corporations will be satisfied as long as the passenger transportation service provided by a municipal corporation is restricted to residents of the municipality, regardless of whether the actual service is provided within the corporate limits of the municipality.

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Municipal authority*—An authority created or organized by a municipality in accordance with the laws of the Commonwealth for the purpose of rendering service similar to that of a public utility.

*Municipal corporation*—The term as defined in 66 Pa.C.S. § 102 (relating to definitions).

*Public transportation authority*—An authority created or organized under the laws of the Commonwealth for the purpose of rendering public transportation service.

*State instrumentality*—

(i) The Commonwealth, its agencies, boards, offices, commissions, councils, departments, bureaus and authorities.

(ii) The term includes independent agencies of the Commonwealth and State affiliated entities such as the State System of Higher Education.

*Substantial ongoing control*—The act of setting or affirmatively approving the rates, routes, schedules, terms and conditions of service, and the monitoring and enforcement of a contractor's compliance with them.

(c) *Evidence of substantial ongoing control*. Substantial ongoing control is evidenced through:

(1) The terms of a written contract between the third party and the contracting entity.

(2) A statute, regulation, ordinance or other provision of law that the third party contractor must comply with in the provision of the transportation services.

(3) Written audits or inspection reports of the contractor's compliance with the contract and relevant provisions of law.

(d) *Exemptions*.

(1) *State instrumentalities*. Passenger transportation services provided by third parties under contract to State instrumentalities, and their subcontractors, are not subject to Commission jurisdiction when the following conditions are present:

(i) The State instrumentality's enabling legislation does not expressly require the third party to obtain a certificate of public convenience from the Commission when providing the service.

(ii) The service is subject to substantial ongoing control by the State instrumentality as to the following:

(A) The rates charged to passengers for the service.

(B) The routes for the service.

(C) The schedule of the service.

(D) The terms and conditions of the service, including who is eligible to be a passenger.

(2) *Municipal authorities*. Passenger transportation services provided by third parties under contract to municipal authorities, and their subcontractors, are not subject to Commission jurisdiction when the following conditions are present:

(i) The service would be nonjurisdictional if provided by the municipal authority itself.

(ii) The service is subject to substantial ongoing control by the municipal authority as to the following:

(A) The rates charged to passengers for the service.

(B) The routes for the service.

(C) The schedule of the service.

(D) The terms and conditions of the service, including who is eligible to be a passenger.

(3) *Municipal corporations*. Passenger transportation service provided by third parties under contract to municipal corporations, and their subcontractors, are not subject to Commission jurisdiction when the following conditions are present:

(i) The service would be nonjurisdictional if provided by the municipal corporation itself.

(ii) The service is subject to substantial ongoing control by the municipal corporation as to the following:

(A) The rates charged to passengers for the service.

(B) The routes for the service.

(C) The schedule of the service.

(D) The terms and conditions of the service, including who is eligible to be a passenger.

(4) *Public transportation authorities*. When a public transportation authority's enabling legislation exempts it from Commission jurisdiction, passenger transportation services provided by third parties under contract to the public transportation authority are not subject to the Commission's jurisdiction when the following conditions are present:

(i) The public transportation authority's enabling legislation expressly authorizes it to contract with third parties to provide passenger transportation services.

(ii) The service is subject to substantial ongoing control by the public transportation authority as to the following:

(A) The rates charged to passengers for the service.

(B) The routes for the service.

(C) The schedule of the service.

(D) The terms and conditions of the service, including who is eligible to be a passenger.

(5) *Cooperative agreements*. Passenger transportation services provided under a cooperative agreement between municipal corporations or authorities, which permit them to operate in each other's geographic service areas, are not subject to Commission jurisdiction. Passenger transportation services provided by third parties under contract to the contracting municipal corporation or authority are not subject to Commission jurisdiction so long as the services are subject to the substantial ongoing control of the contracting municipal corporation or authority, or both, as to the following:

(i) The rates charged to passengers for the service.

(ii) The routes for the service.

(iii) The schedule of the service.

(iv) The terms and conditions of the service, including who is eligible to be a passenger.

[Pa.B. Doc. No. 13-954. Filed for public inspection May 24, 2013, 9:00 a.m.]