

**[J-2A-2018 and J-2B-2018]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

BUCKS COUNTY SERVICES, INC., : No. 8 EAP 2017
CONCORD COACH LIMOUSINE, INC. :
T/A CONCORD COACH TAXI, : Appeal from the Order of
CONCORD COACH USA, INC. T/A : Commonwealth Court dated January
BENNETT CAB, DEE-DEE CAB, INC. T/A : 3, 2017 at No. 584 MD 2011.
PENN DEL CAB, GERMANTOWN CAB :
COMPANY, MCT TRANSPORTATION, : ARGUED: March 6, 2018
INC. T/A MONTCO SUBURBAN TAXI, :
AND ROSEMONT TAXICAB CO., INC. :

v.

PHILADELPHIA PARKING AUTHORITY
AND PENNSYLVANIA PUBLIC UTILITY
COMMISSION

APPEAL OF: PHILADELPHIA PARKING
AUTHORITY

BUCKS COUNTY SERVICES, INC., : No. 9 EAP 2017
CONCORD COACH LIMOUSINE, INC. :
T/A CONCORD COACH TAXI, : Appeal from the Order entered on
CONCORD COACH USA, INC. T/A : 01/03/2017 in the Commonwealth
BENNETT CAB, DEE-DEE CAB, INC. T/A : Court at No. 584 MD 2011.
PENN DEL CAB, GERMANTOWN CAB :
COMPANY, MCT TRANSPORTATION, : ARGUED: March 6, 2018
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PHILADELPHIA PARKING AUTHORITY
AND PENNSYLVANIA PUBLIC UTILITY
COMMISSION

APPEAL OF: PENNSYLVANIA PUBLIC
UTILITY COMMISSION

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OPINION

JUSTICE DOUGHERTY

DECIDED: October 17, 2018

Appellants, the Philadelphia Parking Authority (PPA) and the Pennsylvania Public Utility Commission (PUC), appeal from the order of the Commonwealth Court invalidating a jurisdictional agreement between PPA and PUC and concluding certain PPA regulations are invalid and unenforceable as to partial rights taxicabs operating in the City of Philadelphia (City). We reverse the Commonwealth Court’s order in part (with regard to amended Count IV of the Amended Petition for Review), and affirm it in part (with regard to Counts V-VIII).

Appellees are suburban common carriers which, pursuant to certificates of public convenience, are authorized to provide hail or call taxicab services, known in the industry as “call or demand services,” in the Commonwealth. Appellees are also authorized to provide call or demand services in limited portions of the City, while being prohibited from providing call or demand service to the City’s business or tourist districts, Philadelphia International Airport, 30th Street Station, or City casinos. Taxicabs which are authorized to provide call or demand service throughout the City are known as “medallion taxicabs,” while appellees operate what are known as “partial rights taxicabs.” Prior to 2004, PUC was responsible for regulating all taxicab service in the Commonwealth. Medallion taxicabs were regulated pursuant to the Medallion Act, 66 Pa.C.S. §§2401 - 2416 (repealed), and all other taxicabs, including those operated by appellees, were regulated pursuant to the Public Utility Code, 66 Pa.C.S. §§101 – 3316, and PUC regulations. In

2004, the General Assembly passed Act 94,¹ which repealed the Medallion Act, and substantially reenacted Chapter 57 of the Parking Authorities Law, 53 Pa.C.S. §§5701 - 5745. Act 94 transferred jurisdiction over and regulation of medallion taxicab service within the City from PUC to PPA. PUC retained jurisdiction over the regulation of taxicabs with PUC certificates in all other parts of the Commonwealth, and PUC and PPA were granted dual jurisdiction over partial rights taxicabs. The General Assembly recognized Act 94 created a jurisdictional overlap within the City with regard to partial rights taxicabs. Accordingly, in Section 22(4) of Act 94,² the General Assembly provided PUC and PPA the power to resolve by mutual agreement any jurisdictional issues that may be associated with that overlap.

In February 2005, PUC and PPA entered into a Jurisdictional Agreement, which was published in the Pennsylvania Bulletin on March 12, 2005, along with the PUC order

¹ Act of July 16, 2004, P.L. 758, No. 94, effective March 12, 2005, *as amended*. In July of 2012, the General Assembly amended Act 94 by enacting Act 119. Act of July 5, 2012, P.L. 1022, No. 119.

² Section 22(4) of Act 94, which is not included in the codified version of the law, see *Bucks County Servs. Inc. v. PPA*, No. 584 M.D. 2011, (Pa. Cmwlth. Nov. 28, 2016), slip op. at 4 n.5, provides:

(4) The [PUC] shall assist the [PPA] to prepare for the transfer and to ensure a smooth transition with as little disruption as possible to public safety, consumer convenience and the impacted industries. The [PUC] and the [PPA] are empowered to resolve by mutual agreement any jurisdictional issues that may be associated with the transfer. Any agreement shall be reported to the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives and will be considered effective unless either the Senate or the House of Representatives rejects the submitted agreement by resolution within ten legislative days of submission. Upon becoming effective, an agreement shall be published in the Pennsylvania Bulletin.

53 Pa.C.S. §5701, Historical and Statutory Notes.

ratifying the Jurisdictional Agreement. See 35 Pa. B. 1737 (2005). The Jurisdictional Agreement provides, in relevant part:

2. Partial Authority Taxicabs

Currently, there are carriers authorized to provide taxicab service to designated areas within [the City] on a non-city wide basis. Section 11 of Act 94[, 53 Pa.C.S. §5714,] provides that the PPA has jurisdiction over these carrier's [sic] operations within [the City]. These carriers also hold authority from the [PUC] to serve designated areas outside [the City]. The [PUC] and the PPA agree that services provided under dual authority to/from points within the PPA authorized area (in [the City]) to/from points within the [PUC] authorized area (outside [the City]), will be regulated by the PPA.

Id. Pursuant to Act 94, PPA first promulgated and began enforcing taxicab regulations in 2005.³ In 2011, PPA promulgated the regulations at issue in this appeal pursuant to the Regulatory Review Act, 71 P.S. §§745.1 – 745.14, and the Commonwealth Documents Law, and the regulations became effective on December 3, 2011 (the 2011 regulations).

In November 2011, appellees filed a twelve count Petition for Review in the Commonwealth Court's original jurisdiction, challenging PPA's regulation of partial rights taxicabs and seeking, in part, declaratory and injunctive relief. On December 22, 2011, Judge Butler denied injunctive relief. *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Dec. 22, 2011). Following four years of additional litigation, Counts II and IV-VIII remained.⁴ Count II sought a declaration PPA failed to comply with Section 5702

³ PPA's 2005 regulations were invalidated by the Commonwealth Court for failure to comply with the Commonwealth Documents Law. *Germantown Cab Co. v. PPA*, 993 A.2d 933 (Pa. Cmwlth. 2010), *aff'd per curiam*, 36 A.3d 105 (Pa. 2012).

⁴ In January 2012, appellees filed an Amended Petition for Review. In June 2013, a three-judge panel of the Commonwealth Court sustained appellants' preliminary objections and struck Count IV, which sought a declaration the Jurisdictional Agreement was invalid, for failure to join indispensable parties. *Bucks County Servs., Inc. v. PPA*, 71 A.3d 379 (Pa. Cmwlth. 2013) (*Bucks County I*). In June 2014, appellees and PPA filed

of Act 94, 53 Pa.C.S. §5702, which required PPA to submit proposed regulations to the City of the First Class Taxicab and Limousine Advisory Committee (Advisory Committee), when promulgating the 2011 regulations. Count IV challenged the Jurisdictional Agreement to the extent it affects the application and manner of enforcement of PPA's regulations regarding partial rights taxicabs. Specifically, Count IV asserted the Jurisdictional Agreement is invalid because it (1) violates Act 94, (2) violates appellees' rights to due process, and (3) violates appellees' rights to equal protection generally and under the Uniformity Clause of the Pennsylvania Constitution.⁵ The remaining counts sought to invalidate PPA's regulations relating to mileage limitations, 52 Pa. Code §1017.4(a)⁶ (Count V), inspections and vehicle partitions, 52 Pa. Code §§1017.2,

cross-motions for summary relief as to Count III, which asserted PPA lacked the authority to regulate partial rights carriers' operations within the City under Act 94. A three-judge panel of the Commonwealth Court granted summary relief in appellants' favor concluding by operation of law Act 94 authorizes PPA to regulate partial rights carriers. *Bucks County Servs., Inc. v. PPA*, 104 A.3d 604 (Pa. Cmwlth. 2014) (*Bucks County II*). In 2015, the trial court permitted appellees to amend their Amended Petition for Review to amend Count IV, which had been dismissed in *Bucks County I*. These rulings are not challenged in this appeal.

⁵ The Pennsylvania Uniformity Clause provides “[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.” PA. CONST. ART. VIII, §1. Equal protection claims arise from Article III, Section 32 of the Pennsylvania Constitution, which provides, in relevant part: “[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law[.]” PA. CONST. ART. III, §32. The court did not reach appellees' Uniformity Clause or equal protection claims because, as explained further *infra*, it concluded the Jurisdictional Agreement violated appellees substantive due process rights. *Bucks County Servs. Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), slip op. at 48 n.18.

⁶ Sections 1017.4(a) and (b) provide a taxicab shall not be eligible to enter service if it has more than 135,000 miles on the odometer and a taxicab shall be removed from service upon reaching an age of 8 years old or upon reaching 250,000 cumulative miles. 52 Pa. Code §1017.4(a), and (b).

1017.32(d); 1017.31; 1017.5(b)(12), 1017.21(b)⁷ (Count VI), driver certification standards, 52 Pa. Code §§1021.2, 1021.4(3), 1021.4(7), 1021.7, 1021.8, and 1021.9⁸ (Count VII), and annual renewal of rights and out-of-service designations, 52 Pa. Code §§1003.32, §1011.3⁹ (Count VIII), on the grounds the regulations were not within PPA's statutory authority and violated appellees' substantive and procedural due process rights.

In October 2015, Judge Brobson conducted a two-day non-jury trial, framing the issues to be decided as follows:

1. With respect to Count II of the Amended Petition for Review, whether the [PPA] failed to comply with 53 Pa.C.S. §5702 when promulgating its current regulations (published on December 3, 2011)?¹⁰

⁷ Section 1017.2 provides a vehicle may not perform taxicab service without a taxi and limousine division (TLD) inspection sticker as provided in Section 1017.32. 52 Pa. Code §1017.2. Section 1017.31 requires every taxicab to submit to at least two scheduled inspections by PPA on an annual basis. 52 Pa. Code §1017.31. Section 1017.32(d) provides only PPA may conduct state inspections and affix TLD inspection stickers. 52 Pa. Code §1017.32(d). Section 1017.5(b)(12) provides a taxicab must be equipped with a protective shield which separates the front seat from the back seat. 52 Pa. Code §1017.5(b)(12). Section 1017.21(b) requires that all meters be inspected by PPA prior to use, meters must be sealed after inspections, and if a meter seal is broken the vehicle must be taken out of service and the meter re-inspected. 52 Pa. Code §1017.21(b).

⁸ Section 1021.2 permits only certified drivers to drive taxicabs. 52 Pa. Code §1021.2. Section 1021.4(3) requires an applicant have satisfactorily completed taxicab driver training and testing. 52 Pa. Code §1021.4(3). Section 1021.4(7) provides an applicant is not eligible for certification if his license has been suspended, revoked or otherwise invalidated within the past six months. 52 Pa. Code §1021.4(7). Section 1021.7 provides an applicant shall attend an in-class training program. 52 Pa. Code. §1021.7. Section 1017.8 lists the areas addressed in driver training. 52 Pa. Code §1017.8. Section 1017.9 requires applicants to take and pass a certification test. 52 Pa. Code §1017.9.

⁹ Section 1003.32 provides upon observation of a condition creating a public safety concern PPA may place the taxicab out-of-service. 52 Pa. Code §1003.32. Section 1011.3 provides a taxicab driver certificate expires one year after issuance and requires a driver to complete renewal forms annually. 52 Pa. Code §1011.3.

¹⁰ The trial court entered judgment in favor of PPA on Count II. Appellees have not appealed this decision.

2. With respect to amended Count IV of the Amended Petition for Review, whether the Jurisdictional Agreement between the [PPA] and the PUC should be declared invalid because it violates: (a) Act 94, (b) [appellees'] rights to due process and equal protection under the United States and Pennsylvania Constitutions, or (c) the Uniformity Clause of the Pennsylvania Constitution?
3. With respect to Counts V through VIII of the Amended Petition for Review, whether the [PPA's] regulation of vehicle mileage limits, vehicle inspections, and vehicle partitions, and driver certification and its regulations relating to annual renewal and out-of-service designations exceed the [PPA's] statutory powers and/or violate [appellees'] substantive due process rights. Within this main issue, [appellees] advance global challenges — *i.e.*, challenges that apply to all of the challenged regulations — and challenges specific to each regulation.

Bucks County Servs. Inc. v. PPA, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), slip op., at 2-3.¹¹

In November 2016, the court issued an unpublished order and opinion containing numerous findings of fact and conclusions of law. With regard to Count IV (application of the Jurisdictional Agreement), the court made the following findings of fact. The court acknowledged appellees, PPA, and PUC each called witnesses at trial to testify as to the proper interpretation and application of the Jurisdictional Agreement to certain trips and yet none of these witnesses could agree on which taxicabs trips would be regulated by each agency. *Id.* at 6-10, Finding of Fact (FOF) No. 13. The court found the lack of consistency in witnesses' testimony showed the Jurisdictional Agreement does not clearly designate when appellees will be subject to each agency's jurisdiction, it is impossible for

¹¹ On day two of the trial, the court asked the parties to stipulate to a series of statements made by the court. The parties agreed, *inter alia*: (1) a PUC-certificated taxicab may pick up a passenger in its PUC territory and drop off the passenger in Philadelphia, Notes of Testimony dated 10/15/2015, at 279-80, 288; (2) a partial rights taxicab may pick up a passenger either by call or demand in its Philadelphia territory, *id.* at 282-83, 289, 296; and (3) a PUC-certificated taxicab may pick up in Philadelphia if the call is received by telephone and drop off is in its PUC territory, *id.* at 297.

appellees to determine when their taxicabs are required to be in compliance with each agency's regulations, it does not clearly and adequately define when appellees' taxicabs must be listed on Form PR-1¹² or which taxicabs are subject to the payment of annual assessments, and which taxicabs must be inspected by PPA or be subject to possible enforcement stops and/or impoundment. *Id.* at 10-11, FOF Nos. 14-17. The court found the Jurisdictional Agreement, as applied to appellees, "is unclear, vague, and inadequate and, therefore, unreasonable" because it does not clearly define which entity regulates partial rights taxicab operations in the City and it creates uncertainty as to which taxicab operations are regulated by each agency. *Id.* at 11, FOF No. 18.

The court further noted Section 5714(c) of Act 94 granted PPA the power to regulate any taxicab operations that start and/or end in the City and that the Jurisdictional Agreement did not affect this power. *Id.* at 40. Thus, the court concluded appellees' claim the Jurisdictional Agreement violates Act 94 because it transfers power to regulate taxicab service outside the City from PUC to PPA lacked merit. *Id.* Next, the court concluded nothing in Section 5722 or anywhere else in Act 94 requires PPA to adopt PUC's existing regulations for partial rights taxicabs or to work with PUC to develop one consistent set of regulations for partial rights taxicabs because PPA is empowered to use its discretion to adopt regulations applicable to partial rights taxicabs. *Id.* at 41-42, *citing* 53 Pa.C.S. §5722 ("The [PPA] may prescribe such rules and regulations as it deems necessary to govern the regulation of taxicabs within cities of the first class under this chapter...."). The court determined the purpose of the Jurisdictional Agreement was to

¹² As part of the annual renewal process, partial rights taxicab operators are required to file a Form PR-1 with PPA to ensure compliance with applicable statutes and regulations. See 52 Pa. Code §1011.3(c).

decide which entity will regulate where both are authorized to regulate under Act 94. *Id.* at 42.

The court then addressed appellees' argument the Jurisdictional Agreement, as applied by PPA and PUC, violates their substantive due process rights because the Jurisdictional Agreement is confusing and creates uncertainty regarding which taxicabs must be listed on the PR-1, which taxicabs are subject to the payment of annual assessments, and which taxicabs must be inspected by PPA or be subject to a possible enforcement stop and/or impoundment. The court determined PUC's issuance to appellees of certificates of convenience, which provide partial rights to operate within designated areas of the City, is akin to issuance of a license to practice a profession and appellees therefore have a protected property interest in operating within the City such that any regulation must be "rationally related to a legitimate state interest." *Id.* at 45-46, quoting *Khan v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 947 (Pa. 2004); see also *Dranzo v. Winterhalter*, 577 A.2d 1349, 1355 (Pa. Super. 1990), *appeal denied*, 585 A.2d 468 (Pa. 1991) (law purporting to be exercise of police power must not be arbitrary or unreasonable). The court further concluded the Jurisdictional Agreement is subject to the same substantive due process analysis as other statutes or regulations because the Jurisdictional Agreement emanates from Act 94 and attempts to prescribe how Act 94 will be administered with respect to partial rights taxicabs. *Id.* at 46. The court opined "[t]he Jurisdictional Agreement, as it relates to partial rights taxicabs, is unclear, vague, and inadequate and, therefore, unreasonable because it does not clearly define which entity, either PUC or the [PPA], will regulate partial rights taxicab operations in the City." *Id.* at 46-47. In making this determination, the court relied upon its finding the testimony

regarding application of the Jurisdictional Agreement to particular trips was inconsistent, and appellees had established the Jurisdictional Agreement did not clearly define for appellees or the regulating authorities when partial rights taxicabs will be subject to regulation by which agency; the court concluded the Jurisdictional Agreement violates appellees' substantive due process rights and entered judgment in favor of appellees on Count IV.¹³ *Id.* at 47-48; *Bucks County Servs. Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), order at ¶2.

With regard to PPA's 2011 regulations (challenged by appellees in Counts V - VIII), the court made the following findings. There are material differences between the operations of medallion taxicabs and partial rights taxicabs. *Id.* at 16, FOF No. 43. Medallion taxicabs derive their authority to operate from a medallion specifically issued to each authorized taxicab, while partial rights taxicabs derive their authority from a certificate of convenience issued to an entity wishing to provide taxicab service within the City on a non-citywide basis. *Id.* at 17, FOF No. 43(c), (d). Appellees are required to pay an assessment on each taxicab intended to operate in the City and PPA does not take

¹³ The trial court also concluded PUC's arguments that appellees' challenge to the Jurisdictional Agreement were barred by: (1) laches; (2) equitable estoppel; (3) failure to exhaust their remedy at law; and (4) collateral estoppel were without merit because PUC failed to acknowledge Count IV relates to how the Jurisdictional Agreement has been applied in relation to PPA's regulations, which would not have been an issue at the time PUC approved and published the Jurisdictional Agreement in the Pennsylvania Bulletin. The trial court also concluded PUC's argument appellees failed to exhaust administrative remedies was without merit because it assumed appellees raised a facial challenge to the Jurisdictional Agreement. The trial court rejected PUC's assertion collateral estoppel based upon dismissal of Count III also barred Count IV because Count IV challenged the Jurisdictional Agreement on an as-applied basis. *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), slip op. at 48 n.19. We need not reach these additional rulings by the Commonwealth Court because we dispose of the appeal on other grounds.

into account the amount of time each cab actually spends providing service in the City or the revenue it generates therefrom. *Id.* at 17, FOF No. 43(e). The court further found (1) partial rights taxicab drivers are required to attend PPA training, parts of which have nothing to do with service provided by partial rights taxicabs, and (2) partial rights taxicabs, unlike medallion cabs, are required to purchase and install their own meters, which cannot be remotely updated by PPA to apply the in-city fuel surcharge like medallion cab meters, resulting in partial rights taxicabs requiring re-inspection if the drivers manually update the meter. *Id.* at 17-18, FOF Nos. 43(g) – 43(h). Medallion taxicab owners are given a property interest in their medallions, which can be used as collateral to obtain a loan to raise capital to comply with PPA regulations, but partial rights taxicab owners have no property interests in their certificates of convenience and cannot use them as collateral. *Id.* at 18, FOF No. 43(i). Moreover, medallion cabs accrue mileage at a slower rate because they operate in more congested areas and partial rights taxicabs accrue mileage faster by operating in suburban areas. *Id.* at 18, FOF No. 43(j). Finally, the court found PPA's bi-annual inspection procedures are designed to handle the inspection of individual medallion taxicabs but not a whole fleet of partial rights taxicabs. *Id.* at 19, FOF No. 43(k).

The court further ruled PPA's vehicle mileage regulations were arbitrary as they did not bear any relationship to the vehicle standards. *Id.* at 19, FOF No. 45. The court also ruled the regulations relating to driver certification were unreasonable and burdensome as applied to appellees because, *inter alia*, the applicant waiting period was too long and some of the content of driver training was irrelevant to appellees. *Id.* at 20, FOF No. 47. The court determined the regulations relating to partitions in appellees' cabs

were unreasonable because the partitions did not protect the drivers as intended, were a safety hazard to passengers, and inhibited both driver and passenger comfort and communication. *Id.* at 20-21, FOF No. 48.

The Commonwealth Court analyzed appellees' challenges to the 2011 regulations to determine whether promulgation of the regulations exceeded PPA's statutory authority.¹⁴ See *Id.* at 2-3. The court recognized regulations adopted pursuant to legislative rulemaking authority are valid if they are: "(a) adopted within the agency's granted power, (b) issued pursuant to proper procedure, and (c) reasonable." *Id.* at 35, quoting *Tire Jockey Serv., Inc. v. Dep't Env'tl. Prot.*, 915 A.2d 1165, 1186 (Pa. 2007) (the "*Tire Jockey* test").¹⁵ The court also noted that in evaluating the reasonableness of an

¹⁴ Appellees alleged the 2011 regulations were invalid because: (1) they were not promulgated within PPA's statutory authority and (2) they violated their substantive due process rights. The Commonwealth Court did not reach the question of whether the 2011 regulations violated appellees' substantive due process rights — an analysis which asks whether the regulations are rationally related to a legitimate government interest and balances the rights of the individual against the public interest. *Khan*, 842 A.2d at 946-47.

¹⁵ In *Tire Jockey*, a tire processing facility challenged a determination by the Department of Environmental Protection (DEP) that the facility's used tire accumulations did not meet the exception to the definition of solid waste set forth in DEP regulations, and thus required the facility to comply with the permitting regulations governing solid waste management. This Court examined the language of the Solid Waste Management Act, 35 P.S. §§6018.101 - 6018.1003 (SWMA), and DEP's Residual Waste Regulations, 25 Pa. Code §§287.1 - 299.232, to decide whether the DEP's interpretation of the applicable regulations was reasonable; the Court explained that promulgation of an unreasonable regulation or an unreasonable interpretation of a regulation exceeds an administrative agency's authority. 915 A.2d at 1186-87.

As correctly observed by Justice Wecht in his concurring opinion, *Tire Jockey* sets forth a two layer test. Concurring Opinion, slip op., at 3-4. The first layer determines "(1) whether the interpretation of the regulation is erroneous or inconsistent with the regulation, and (2) whether the regulation is consistent with the statute under which it was promulgated." 915 A.2d at 1186. The second layer determines whether an agency's promulgation of a regulation pursuant to its legislative rule-making power, as opposed to

agency's actions, it may reverse an agency determination only if it was made in bad faith, constituted a manifest or flagrant abuse of discretion or a purely arbitrary execution of the agency's duties. *Id.* at 36, citing *Rohrbaugh v. PUC*, 727 A.2d 1080, 1085 (Pa. 1999) (policy allowing shutoff of utilities at tenant's request absent signed agreement from landlord authorizing service to be automatically transferred into landlord's name was not arbitrary or unreasonable because to hold otherwise would require utilities to provide service to non-ratepayer). The court reasoned PPA's failure to take into account the differences between medallion and partial rights taxicabs by applying a single set of regulations to both was unreasonable because it imposed a disproportionate regulatory and financial burden on partial rights taxicabs. *Id.* at 37. The court observed partial rights taxicabs serve a materially different clientele within a materially different geographical footprint and operational model (fleet vs. medallion). *Id.* The court concluded it was unreasonable and capricious for PPA to ignore these material differences when it promulgated the challenged regulations. *Id.* The court noted PPA did not present any witnesses or other evidence to explain the rationale for adopting regulations that are equally applicable to two different types of taxicab service. *Id.* The court entered judgment in favor of appellees on Counts V-VIII, concluding PPA's 2011 regulations applicable to appellees and other partial rights taxicabs were unreasonable in their

its interpretative rule-making power, was (1) within the agency's granted power, (2) issued pursuant to proper procedure, and (3) reasonable. *Id.* Thus, because appellees did not challenge PPA's interpretation of its regulations, but rather asserted the regulations were unreasonable, both the Commonwealth Court's analysis and this Court's analysis address only the second layer of the *Tire Jockey* test.

entirety and therefore invalid, void, and unenforceable. *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), order at ¶3.

PPA filed a timely motion for post-trial relief pursuant to Pa.R.C.P. 227.1, requesting judgment in its favor or, in the alternative, for clarification of the court's opinion and order.¹⁶ On January 3, 2017, the court issued a memorandum and order disposing of PPA's post-trial motion. First, the court observed because PPA failed to cite to any specific finding of fact it believed to be erroneous and/or not supported by evidence, and made only generalized statements regarding evidence and testimony presented by appellees, PPA had presented "a purely legal challenge to the Court's Opinion and not one of [a] lack of substantial evidence." *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Jan. 3, 2017), slip op. at 2. The court thus rejected all of PPA's arguments except for its claim the court erred by invalidating all of the 2011 regulations. Although the court reiterated its conclusion the regulations failed to account for the differences between medallion taxicabs and partial rights taxicabs and therefore were a purely arbitrary exercise of PPA's rulemaking power, the court acknowledged appellees challenged only certain regulations and accordingly amended its order to declare invalid only the regulations specifically challenged by appellees.¹⁷

¹⁶ After PPA filed its post-trial motion, the court issued an order directing appellees and PUC to file answers but specifically directing the parties "shall not" file briefs. PUC filed an answer as directed and in the answer joined PPA's post-trial motion in addition to articulating various errors it claimed were committed by the court, thus properly preserving its grounds for appeal. The court recognized PUC's joinder in PPA's post-trial motion. *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Jan. 3, 2017), slip op. at 1 n.1.

¹⁷ The trial court invalidated these regulations: (1) vehicle age and mileage limitations, 52 Pa. Code §1017.4; (2) pre-service vehicle inspections, 52 Pa. Code §1017.2; (3) full Pennsylvania Department of Transportation vehicle inspections, 52 Pa. Code

Appellants filed separate appeals to this Court. PPA essentially raises two issues: (1) whether the trial court erred by invalidating PPA's regulations; and (2) whether the trial court erred by concluding the Jurisdictional Agreement violated appellees' substantive due process rights. PUC joins in PPA's challenge regarding the Jurisdictional Agreement. We first turn to appellants' arguments regarding the Jurisdictional Agreement.

The Jurisdictional Agreement

PPA asserts the trial court erred in holding the Jurisdictional Agreement violates appellees' substantive due process rights. PPA notes jurisdiction over taxicabs is authorized by Act 94 and/or the Public Utility Code, the Commonwealth Court's earlier decision in *Bucks County II* established PPA is authorized to regulate partial rights taxicabs, and the trial court thus properly concluded appellees may be required to comply with two separate sets of regulations. *Bucks County Servs., Inc. v. PPA*, 104 A.3d 604, 611 (Pa. Cmwlth. 2014). According to PPA, dual jurisdiction occurs for duly-inspected partial rights taxicabs only when a trip contains one point within the carrier's designated area of the City and one point outside of the City. 53 Pa.C.S. §§5714(c)(2), (c)(3), (d)(1)(i), (d)(1)(ii);¹⁸ 52 Pa. Code §1015.2(d) (partial-rights taxicab may accept street hail

§1017.32(d); (4) biannual vehicle inspections, 52 Pa. Code §1017.31; (5) meter seal inspections, 52 Pa. Code §1017.21(b); (6) vehicle partitions/protective shields, 52 Pa. Code §1017.5(b)(12); (7) driver certification, 52 Pa. Code §§1021.2, 1021.4(3), 1021.4(7), 1021.7, 1021.8, and 1021.9; (8) out-of-service designations, 52 Pa. Code §1003.32; and (9) annual renewal, 52 Pa. Code §1011.3. *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Jan. 3, 2017), slip op. at 4-5.

¹⁸ Section 5714(c)(2) and (3) of Act 94 provides:

(c) Service. -- A vehicle authorized by a certificate to provide call or demand service within cities of the first class may transport persons and their baggage upon call or demand and parcels, packages and property at the same basic metered rates charged to passengers:

* * *

for taxicab service only at location within geographical boundaries identified in partial-rights taxicab certificate holder's PPA-approved tariff). PPA notes the parties at trial stipulated to the jurisdictional rights of each category of taxicabs. See n. 11, *supra*. PPA asserts when those stipulations are read in conjunction with Section 5714(c) and (d) it is clear which trips are regulated by PPA. PPA thus argues the Commonwealth Court erred by concluding the "Jurisdictional Agreement makes it impossible for [appellees] to determine when a taxicab is required to be in compliance with [PPA's] regulations." PPA Reply Brief at 7, *quoting Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), slip op. at 47. PPA asserts the only significance of the Jurisdictional Agreement is that PUC agreed to defer its regulation of partial rights taxicabs in the limited

(2) from any point in the city of the first class for which its certificate is issued to any point in this Commonwealth;

(3) from any point in this Commonwealth to any point in the city of the first class for which its certificate is issued if the request for service for such transportation is received by call to its centralized dispatch system[.]

* * *

53 P.S. §5714(c)(2) and (3). Section 5714(d)(1)(i) and (ii) provides:

(d) Other vehicles.

(1) A vehicle which is not authorized by a certificate to provide call or demand service within cities of the first class but which is operated by the holder of a certificate of public convenience from the [PUC] authorizing call or demand service elsewhere in this Commonwealth may transport persons and property:

(i) to cities of the first class in accordance with the service authorized under its certificate of public convenience; and

(ii) from any point in a city of the first class to any point in this Commonwealth beyond that city of the first class if the request for service for such transportation is received by call to its radio dispatch service.

53 P.S. §5714(d)(1)(i) and (ii).

circumstances enumerated in Section 5714(c)(2), (c)(3), (d)(1)(i), (d)(1)(ii), and the Jurisdictional Agreement did not grant or extend the jurisdiction of either agency.

PPA distinguishes the two types of taxicabs, noting a PUC-certified taxicab is authorized by a certificate of public convenience to provide service in a portion of the Commonwealth, except for the City, whereas a partial rights taxicab is authorized by a certificate of public convenience (1) subject to PUC's jurisdiction to provide service in a non-City portion of the Commonwealth and (2) subject to PPA's jurisdiction to provide taxicab service in a designated portion of the City. PPA asserts this distinction is important because appellees still have the ability to determine the number of vehicles which will provide service in the City while maintaining their ability to provide service in their PUC-designated non-City areas; they simply have to register their City-service cabs with PPA, have them inspected by PPA and comply with PPA regulations, none of which violates appellees' rights. Finally, PPA contends appellees did not establish that any partial rights taxicab has been cited for a violation of the Jurisdictional Agreement (because the Jurisdictional Agreement is not a binding rule that can be violated by a taxicab), or that the Jurisdictional Agreement itself imposed any increased costs or an undue burden on them.

PUC explains that under Act 94 there are two instances where dual jurisdiction exists over trips performed by partial rights taxicabs: (1) from a point in its PPA authorized area to a point in its PUC authorized area, 53 Pa.C.S. §5714(c)(2), 53 Pa.C.S. §5714(d)(1)(ii), and (2) from a point in its PUC authorized area to a point in Philadelphia within its PPA authorized area, 53 Pa.C.S. §5714(c)(3); 53 Pa.C.S. §5714(d)(1)(i). PUC asserts the Jurisdictional Agreement properly clarifies which service will be regulated by PPA, does not add to PPA's jurisdiction, and even if the Jurisdictional Agreement did not

exist, appellees would have to comply with PPA regulations for partial rights trips because Act 94 provides for dual regulation over such trips.

PUC further argues because Act 94 — not the Jurisdictional Agreement — is the source of PPA’s oversight of dual jurisdiction trips, the Jurisdictional Agreement cannot violate appellees’ due process rights. According to PUC, the Commonwealth Court erred in concluding the Jurisdictional Agreement was the source of confusion regarding the annual renewal and assessment procedures because the Jurisdictional Agreement does not establish the process; Act 94 and PPA regulations do this. Thus, PUC argues the court misconstrued the purpose of the Jurisdictional Agreement, which does no more than identify which dual jurisdiction trips fall under exclusive PPA jurisdiction. PUC argues the same reasoning applies to appellees’ claim regarding enforcement/impoundment regulations and their alleged inability to maintain pre-Act 94 City service rights without registering their entire fleet with PPA and complying with PPA’s regulations. PUC argues having to comply with different regulations for different jurisdictions is not a violation of appellees’ due process rights, but rather a fact of doing business in two jurisdictions. PUC’s Brief at 28, *citing Bucks County II*, 104 A.3d at 611 (“prospect of having to comply with competing, and perhaps even conflicting, regulatory regimes is an occupational hazard for any business enterprise that chooses to operate in more than one jurisdiction”).¹⁹

Appellees respond they challenged the Jurisdictional Agreement only to the extent it affects the application and manner of enforcement of PPA’s regulations of their service.

¹⁹ PUC also argues the Commonwealth Court erred by rejecting its arguments appellees’ challenges to the Jurisdictional Agreement were barred by: (1) laches; (2) equitable estoppel; (3) failure to exhaust their remedy at law; and (4) collateral estoppel. We need not address these additional arguments by PUC because, as discussed *infra*, we conclude the Jurisdictional Agreement does not violate appellees’ substantive due process rights.

Appellees argue the trial stipulations concerned only which trips provided by partial rights taxicabs are subject to PPA regulation and which trips are subject to PUC's regulation under the terms of the Jurisdictional Agreement. Appellees deny there was any stipulation regarding how the Jurisdictional Agreement affects the application and manner of the enforcement of PPA's regulations; appellees claim the parties' continued dispute on this central issue is reflected in the contradictory testimony of PPA's own witnesses. Finally, appellees argue PPA has waived its claims of error pertaining to the Jurisdictional Agreement by making only generalized statements regarding testimony and evidence without referring to any specific finding of fact or conclusion of law.²⁰

The appeal from the Commonwealth Court's determination regarding the validity of the Jurisdictional Agreement presents a pure question of law, and our standard of review is *de novo* and our scope of review is plenary. *Powell v. Unemployment Comp. Bd. of Review*, 157 A.3d 884, 890 (Pa. 2017). In order to survive a substantive due process challenge "a statute or regulation must seek to achieve a valid state objective by means that are rationally related to that objective." *Khan*, 843 A.2d at 946 (citation omitted). Further, a substantive due process analysis requires courts to balance the rights of the individuals subject to the regulation against the public interest. *Id.* at 946-47 (citations omitted).

We begin by observing that in Section 5714(c) and (d) of Act 94 the General Assembly delineated the services permissible in the City by the two types of taxicabs. Dual jurisdiction over taxicabs whose designated territories include both areas within the City and suburbs exists in two instances: (1) when a taxicab provides service from within

²⁰ Appellees also assert because PUC failed to file a post-trial motion it has waived its right to challenge the trial court's decision on appeal. Appellee's Brief at 12. We conclude PUC did not waive its right to challenge the trial court's decision because PUC followed the trial court's explicit instructions regarding post-trial motions and in so doing joined PPA's post-trial motion. See n.16, *supra*.

its designated City territory to an area outside the City within the taxicab's designated suburban territory, 53 Pa.C.S. §5714(c)(2) and §5714(d)(1)(ii), and (2) when a taxicab provides service from its designated suburban territory to an area within its designated City territory, 53 Pa.C.S. §5714(c)(3) and §5714(d)(1)(i). In the most basic terms, dual jurisdiction exists over a trip because it either begins or ends in the carrier's designated City territory. Transport occurring completely within the City is within PPA's exclusive jurisdiction. Transport occurring completely outside the City is within PUC's exclusive jurisdiction. Through its regulations PPA has established that carriers who wish to: (1) respond to hails within their designated City territory, (2) perform point-to-point service in their designated City territory, and (3) transport a passenger from their designated City territory to a point in the City outside their designated territory must register with PPA the taxicabs the carriers intend to provide such service. Taxicabs which are registered and certificated by PPA must comply with PPA's regulations. Appellees' taxicabs that are not registered with PPA can only provide service consistent with their PUC certificates. 53 Pa.C.S. §5714(d)(1).

The General Assembly recognized the existence of dual jurisdiction over the above-listed trips, and in Section 22(4) of Act 94 provided a method for PUC and PPA to determine whether both agencies would exercise jurisdiction over dual jurisdiction service or whether a single agency would exercise jurisdiction over dual jurisdiction service. 53 Pa.C.S. §5701, Historical and Statutory Notes. Following the enactment of Act 94, appellants met to negotiate the dual jurisdiction issue and, in the resulting Jurisdictional Agreement, appellants agreed that where dual jurisdiction exists over a trip, PUC would cede jurisdiction to PPA. See 35 Pa. B. 1737 (2005). Thus, under the Jurisdictional Agreement the trips listed in Sections 5714(c)(2), 5714(c)(3), 5714(d)(1)(i), and 5714(d)(1)(ii) are regulated by PPA.

Appellees alleged the Jurisdictional Agreement violates their substantive due process rights because (1) the Jurisdictional Agreement as administered through PPA's regulations relating to the filing of the PR-1 and the payment of the annual assessment is unconstitutionally vague; (2) PPA's enforcement of its regulations relating to the required inspection stickers through enforcement stops is unduly burdensome; and (3) appellees are unable to maintain their pre-Act 94 service rights without registering their entire fleets with PPA. The Commonwealth Court concurred, holding "[t]he Jurisdictional Agreement, as it relates to partial rights taxicabs, is unclear, vague, and inadequate and, therefore, unreasonable because it does not clearly define which entity, either the PUC or the [PPA] will regulate partial rights taxicab operations in the City." *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), slip op. at 46-47.

Our review reveals the Commonwealth Court erred in concluding the Jurisdictional Agreement violates appellees' substantive due process rights. The purpose of the Jurisdictional Agreement was to clarify whether PPA, PUC, or both agencies would regulate a trip which is subject to dual jurisdiction, and the Agreement simply states that where dual jurisdiction exists PUC cedes jurisdiction to PPA. Accordingly, the Commonwealth Court's holding regarding appellees' substantive due process rights could not properly have been based on the content of the Jurisdictional Agreement itself, but rather upon the requirements of Act 94 and PPA's regulations relating to the filing of the PR-1, the payment of the annual assessment, and PPA's enforcement system, which regulations PPA is duly authorized to promulgate. 53 Pa.C.S. §5722 (PPA may prescribe such rules and regulations as it deems necessary to govern regulation of taxicabs in City). The Jurisdictional Agreement does not modify PPA's jurisdiction nor empower PPA to establish enforcement mechanisms. PPA's jurisdiction over partial-rights taxicabs and its enforcement powers emanate from Act 94. See 53 Pa.C.S. §5705(b) (Commencement

of complaints); 53 Pa.C.S. §5707 (Budgets and Assessments); 53 Pa.C.S. §5714(c), and (d). Thus, the Jurisdictional Agreement serves the legitimate state purpose of clarifying which state agency's jurisdiction takes precedence where dual jurisdiction exists. See *Khan*, 843 A.2d at 946 (to withstand substantive due process challenge regulation must seek to achieve valid state objective by means that are rationally related to that objective).

We recognize appellees' substantive due process claim is based upon their belief PPA's regulations are irrational as to appellees' operations. However, it is clear that if PPA had chosen to promulgate regulations identical to PUC's regulations promulgated pursuant to the Public Utility Code, which are less stringent and with which appellees already comply, appellees would have no objection to the Jurisdictional Agreement or PPA's regulations. PPA's regulations, particularly the requirements regarding registration of taxicabs with PPA, may well be confusing and burdensome, but the fact PPA promulgated poorly drafted regulations pursuant to Section 5722 of Act 94 does not invalidate the Jurisdictional Agreement. We reject the argument that the Jurisdictional Agreement itself unduly burdens appellees' right to provide service consistent with their certificates of public service. The Commonwealth Court erred in holding otherwise.²¹

²¹ In their Amended Complaint, appellees also alleged the Jurisdictional Agreement violates Act 94. The Commonwealth Court concluded the Jurisdictional Agreement did not violate Act 94 because Section 5714(c) granted PPA the power to regulate any taxicab operations starting or ending in the City. *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), slip op. at 40. Appellees do not challenge the Commonwealth Court's conclusion the Jurisdictional Agreement does not violate Act 94. Additionally, in their Amended Complaint, appellees asserted the Jurisdictional Agreement violated their right to equal protection generally and under the Uniformity Clause. The Commonwealth Court did not render a decision on appellees' equal protection claims, wherein appellees asserted the application of PPA's rules and regulations to service authorized by PUC subjects appellees to regulatory burdens not imposed on other PUC-licensed taxicabs and, therefore, the Jurisdictional Agreement violates appellees' rights to equal protection. Appellees' equal protection claims fail for the same reasons their substantive due process claims fail. The Jurisdictional Agreement does not **establish** dual jurisdiction, but simply allocates duties under that jurisdiction.

Accordingly, we reverse the Commonwealth Court's decision and vacate the judgment in favor of appellees on Count IV.

PPA's Regulations

PPA asserts the trial court applied the wrong standard when it used the *Tire Jockey* test to analyze appellees' substantive due process claims, and PPA further argues the court erred by concluding the 2011 regulations were arbitrary or unreasonable because they placed extra burdens on partial rights taxicabs. According to PPA, a regulation survives a substantive due process challenge when it aims to achieve a valid state objective by means that are rationally related to that objective and the rights of the individual are balanced against the public interest. PPA's Brief at 15-16, *citing Khan*, 842 A.2d at 947-48. PPA asserts appellees brought as-applied challenges, and as such, the court must consider the regulation's application to a particular person under particular circumstances that deprive that person of a constitutional right. *Id.*, *citing Commonwealth v. Veon*, 150 A.3d 435, 458 (Pa. 2016) (Donohue, J. dissenting). PPA argues the trial court improperly applied a general test of "reasonableness" to **all** partial rights taxicabs, rather than utilize the "as applied" analysis to the discrete circumstances presented by each appellee. PPA further asserts the regulations would survive an as-applied challenge because they have a rational relationship to the valid state goal of providing safe, legal, and dependable service consistent with PPA's grant of legislative power, and the regulations are neither unduly burdensome nor oppressive because every taxicab providing service in PPA's jurisdiction is required to comply with the same regulations.

PPA also argues the relief granted by the Commonwealth Court is inconsistent with Act 94 because appellees are not entitled to special treatment based on their status

Dual jurisdiction actually emanates from Act 94 and any equal protection violation would result from PPA's exercise of its regulatory authority under Act 94.

as operators of partial rights taxicabs. Act 94 is intended to provide uniform standards for all taxicabs providing service in the City. PPA notes where the General Assembly intended uniform treatment of both types of taxicabs within Act 94 it used the generic term “taxicabs”²² and where it intended to differentiate between the types of taxicabs it used the terms “medallion taxicabs” or “partial rights taxicabs.” According to PPA, the challenged regulations are consistent with Act 94 because they do not always differentiate between types of taxicabs, but do differentiate in certain instances that warrant different treatment. PPA argues the Commonwealth Court erred by implicitly concluding partial rights taxicabs should not be considered the same as medallion taxicabs despite the language in Act 94 that treats them the same. PPA asserts the distinctions between the types of taxicabs — Citywide service vs. partial service, medallions vs. certificate of public convenience, and annual partial rights vehicle assessment fees — are not material to appellees’ claims.

PPA further asserts appellees failed to present substantial evidence to establish violations of their substantive due process rights and the trial court erred in concluding otherwise. PPA argues appellees established only that the regulations apply uniformly to

²² Act 94 defines taxicab as:

“Taxicab.” A motor vehicle designed for carrying no more than eight passengers, exclusive of the driver, on a call or demand service basis and used for the transportation of persons for compensation either on:

- (1) a citywide basis as authorized by a certificate of public convenience and a corresponding medallion issued by the authority; or
- (2) a non-citywide basis as authorized by a certificate of public convenience issued by the authority and without a corresponding medallion.

The term includes a wheelchair-accessible taxicab.

53 Pa.C.S. §5701.

all types of taxicabs and failed to present evidence this is unreasonable or unduly burdensome as applied to partial rights taxicabs. PPA argues appellees failed to establish any of the challenged regulations deprived them of their rights to provide service in the City. Specifically, PPA argues appellees failed to show the regulations relating to vehicle age and mileage regulations (53 Pa.C.S. §5714(a)(4), 52 Pa. Code §1017.4(a)), inspections (52 Pa. Code §§1017.2, 1017.32), meter seals (52 Pa. Code §§1017.21, 1017.25, 1017.26), partitions (53 Pa.C.S. §5714(b), 52 Pa. Code §1017.5(b)(12)), driver certification (53 Pa.C.S. §5706(a), 53 Pa. Code §§1021.2, 1021.4(3), 1021.7, 1021.8, 1021.9), annual information filing (53 Pa.C.S. §5707(c)(1)(ii), 52 Pa. Code §1011.3), and out-of-service designations (52 Pa. Code §§1003.31, 1003.32), were unreasonable or created an undue burden as applied to them, or deprived them of their right to provide service in the City. PPA's Brief at 21-35.

Finally, PPA argues the trial court erred by granting relief to certain appellees who did not present any evidence at trial.²³ According to PPA, all parties who joined together pursuant to Pa.R.C.P. 2229(a) to assert as-applied challenges were required to present evidence regarding the application of the regulations to themselves. Pa.R.C.P. 2231(c) ("The trial of an action in which parties have joined or have been joined under Rules 2228 and 2229 shall be conducted as if independent actions between such parties had been consolidated for trial."). PPA notes only Bucks County Services, Inc. and Germantown Cab Co. presented evidence at trial, and at the close of PPA's case-in-chief it moved for non-suit on the basis of the insufficiency of the evidence generally and the failure of five other plaintiffs to present any evidence at all.

²³ These appellees are Concord Coach Limousine, Inc., Concord Coach USA, Dee-Dee Cab, Inc., MCT Transportation Inc., and Rosemont Taxicab Co.

According to appellees, the trial court did not declare PPA's regulations unconstitutional "as applied" to appellees' operations, but rather correctly determined the regulations were unreasonable and invalid under the *Tire Jockey* test. Appellees' Brief at 18-19, *citing Tire Jockey*, 915 A.2d at 1186 (agency regulation is valid and binding so long as it is "(a) adopted within the agency's granted power, (b) issued pursuant to proper procedure, and (c) reasonable"). Appellees further argue that, by making only generalized statements regarding testimony and evidence presented at trial without relating it to any specific improper finding of fact, PPA has waived its right to challenge the trial court's decision relating to the challenged regulations. *Id.* at 20-21.

Appellees also contend the Commonwealth Court's decision is not inconsistent with Act 94 and PPA's argument otherwise fails because PPA makes only generalized statements, fails to cite any specific erroneous finding of fact or conclusion of law, and does not specify how the trial court's findings and conclusions conflict with Act 94. According to appellees, PPA relies exclusively on a purely legal argument Act 94 mandates uniform regulation of all taxicabs, except where a provision explicitly applies only to medallion taxicabs; appellees claim PPA has thus waived any challenge to the trial court's findings of material differences between medallion and partial rights taxicabs or the disproportionate regulatory and financial burden the regulations impose on appellees. Appellees argue, pursuant to *Tire Jockey*, the trial court correctly concluded the evidence supported its conclusion PPA unreasonably ignored the material differences between the two types of taxicabs and possible disproportionate regulatory and financial burdens that could result from uniform application of the regulations. Appellees contend PPA did not present any witnesses or other evidence to explain its rationale for adopting uniform regulations within the City.

Appellees further argue PPA has waived any argument the Commonwealth Court's conclusions were not supported by substantial evidence. In support of this contention, appellees rely upon the trial court's opinion stating PPA made only generalized statements regarding testimony and evidence presented by appellees at trial, and interpreting PPA's post-trial motion as presenting a purely legal challenge rather than a claim the record lacked substantial evidence of its claims. Appellees' Brief at 15, *citing Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Jan. 3, 2017), slip op. at 2.

Finally, appellees argue PPA waived its claim the Commonwealth Court erred in granting relief to the partial rights taxicab carriers who did not appear at trial because PPA did not preserve the claim in post-trial motions as required by Pa.R.C.P. 227.1(b)(1). In any event, appellees observe a party appears for trial if counsel is present on behalf of the named party, which occurred here.²⁴ Appellees' Brief at 16, *citing Shappell v. Kubert*, 763 A.2d 892, 894 (Pa. Super. 2000) ("We note that it is possible for counsel to appear on behalf of a party for trial, select a jury and proceed to trial without the named party's presence."). Appellees also contend that, in order to preserve this claim, PPA should have moved for non-suit pursuant Pennsylvania Rule of Civil Procedure 218 at the commencement of the trial, and by failing to do so waived this issue for purposes of both post-trial motions and appellate review.

We first consider whether the Commonwealth Court erred by analyzing appellees' challenges to the 2011 regulations under the three pronged *Tire Jockey* test. A review of the record demonstrates appellees challenged the validity of the regulations on the basis they were unreasonable, that is, pursuant to the *Tire Jockey* test, and also on the basis

²⁴ Michael S. Henry, who appeared at the trial before the Commonwealth Court, is listed as counsel of record for each carrier.

the regulations violated their substantive due process rights. See Amended Petition for Review at ¶¶ 82, 89, 91, 92, 101, 108, and 110 (asserting the regulations were not within PPA’s statutory authority). In addition, in their pre-trial statement, appellees proffered their trial evidence would prove, pursuant to *Tire Jockey*, that PPA’s regulations are invalid because: (1) there is no rational basis for regulating taxicab service based on the destination of trips provided; (2) there is no rational basis for requiring appellees to comply with redundant regulatory requirements; and (3) compliance with conflicting standards is impossible. See Pretrial Statement, dated 9/15/2015, at 3-5. Pursuant to Pennsylvania Rule of Civil Procedure 1020(c), “causes of action...may be pleaded in the alternative.” *Schreiber v. Republic Intermodal Corp.*, 375 A.2d 1285, 1291 (Pa. 1977) (“[P]laintiffs should not be forced to elect a particular theory in pursuing a claim” to avoid “the attendant possibility that meritorious claims will fail because the wrong legal theory was chosen.”). Thus, it was within the trial court’s purview to assess the evidence and determine the validity of the regulations under either the *Tire Jockey* test or a substantive due process analysis.²⁵

We also reject PPA’s argument the relief granted by the Commonwealth Court is inconsistent with Act 94 because the act is intended to provide for uniform taxicab service throughout the City. In Section 5701.1(1) of Act 94, 53 Pa.C.S. §5701.1(1) (Legislative Findings), the General Assembly set forth its reasons for transferring authority to regulate taxicab and limousine service in the City to PPA. Section 5701.1(1) provides:

The General Assembly finds and declares as follows:

- (1) The health, safety and general welfare of the people of this Commonwealth are directly dependent upon the continual encouragement,

²⁵ Having concluded the Commonwealth Court properly considered appellees’ claims under the *Tire Jockey* test, we need not address PPA’s alternative argument appellees failed to prove a substantive due process violation.

development, growth and expansion of business, industry, commerce and tourism.

(2) Unemployment, the spread of poverty and the heavy burden of public assistance and unemployment compensation can be avoided by the promotion, attraction, stimulation, development and expansion of business, industry, commerce and tourism in this Commonwealth through the development of a clean, safe, reliable and well-regulated taxicab and limousine industry locally regulated by parking authorities in cities of the first class.

(3) Due to the size, total population, population density and volume of both tourism and commerce of a city of the first class, it may be more efficient to regulate the taxicab and limousine industries through an agency of the Commonwealth with local focus than an agency with diverse Statewide regulatory duties. Well-regulated local focus on improving those industries can be an important factor in the continual encouragement, development, attraction, stimulation, growth and expansion of business, industry, commerce and tourism within a city of the first class, the surrounding counties and this Commonwealth as a whole.

53 Pa.C.S. §5701.1. Section 5701.1 is simply a policy declaration that reflects the General Assembly's aspiration that local regulation of taxicabs by PPA will improve the taxicab industry in the City and possibly help the economy. Although the General Assembly specifically distinguishes medallion taxicabs and appellees in certain provisions of Act 94, such distinctions do not equate to a legislative requirement that PPA must regulate medallion taxicabs and appellees (as operators of partial rights taxicabs) uniformly in all other instances. Thus, contrary to PPA's assertion, Act 94 does not mandate uniform regulation of all taxicab service in the City. PPA's argument on this issue is further undermined by the fact that appellees' taxicabs, which are not registered with PPA, may still legally perform services in the City pursuant to their PUC certificated authority without complying with PPA regulations. Appellees' City designated territories, which are located in Northwest Philadelphia, Northeast Philadelphia and Southwest Philadelphia, are underserved or unserved by medallion taxicabs. Appellees provide taxicab service to local residents in areas of the City that medallion taxicab operators do

not find lucrative or avoid due to safety concerns. *Bucks County Servs. Inc. v. PPA*, No. 584 M.D. 2011, (Pa. Cmwlth. Nov. 28, 2016), slip op. at 23, FOF No. 57, *citing* Notes of Testimony at 311-12. The General Assembly’s policy determination that local regulation of taxicab service within the City is desirable does not exempt PPA from the obligation to determine whether its regulations will improve the taxicab industry within the City — a calculation that should take into consideration the differing service types, clienteles, and business models among City taxicabs. Accordingly, we hold the relief granted by the Commonwealth Court is not inconsistent with Act 94.

Turning to the Commonwealth Court’s analysis under the *Tire Jockey* test, we conclude the court did not err in determining the regulations were unreasonable. As stated, when adjudicating the validity of a regulation adopted pursuant to an agency’s rulemaking power a court must consider whether regulations are: (1) within the agency’s granted power; (2) issued pursuant to proper procedure; and (3) reasonable. *Tire Jockey*, 915 A.2d at 1186; *Popowski v. PUC*, 910 A.2d 38, 53 (Pa. 2006); *Rohrbaugh*, 727 A.2d at 1085. Moreover, properly promulgated regulations are generally presumed to be reasonable. *Burstein v. Prudential Prop. & Cas. Ins. Co.*, 809 A.2d 204, 208 (Pa. 2002). In determining the reasonableness of any discretionary agency action, “appellate courts accord deference to agencies and reverse agency determinations only if they were made in bad faith or if they constituted a manifest or flagrant abuse of discretion or a purely arbitrary execution of the agency’s duties or functions.” *Rohrbaugh*, 727 A.2d at 1085.

The first prong of the *Tire Jockey* test is satisfied because PPA is authorized by Section 5722 of Act 94 to promulgate regulations relating to taxicab service in the City. Further, with respect to prong two, there is no question that PPA promulgated the 2011 regulations using the proper procedures. However, the Commonwealth Court concluded PPA’s regulations were unreasonable and arbitrary because the PPA ignored the material

differences between appellees and medallion taxicab operators relating to the services provided, the clientele, geographic footprints, and business models (fleet vs. medallion) when promulgating the regulations. *Bucks County Servs., Inc. v. PPA*, 584 M.D. 2011 (Pa. Cmwlth. Nov. 28, 2016), slip op. at 37. The court further concluded there was ample evidence showing a disproportionate burden on appellees, and PPA failed to present any evidence demonstrating “its rationale for adopting regulations that were equally (and blindly) binding on both medallion cabs and [appellees].” *Id.*

The Commonwealth Court did not err in this regard. As noted, the court identified material differences between the regulations’ application to appellees and medallion taxicab operators, which results in an unreasonable and arbitrary burden upon appellees. First, appellees operate fleets of cabs; appellee Bucks County Services operates approximately eighteen cabs while appellee Germantown Cab Co. operates nearly 150 cabs. Appellees must purchase, outfit, maintain, and insure each vehicle they operate. Medallion-holders operate a single vehicle per medallion and that medallion may be used as collateral to fund operating expenses. The number of medallions issued is limited to 1765, see 53 Pa.C.S. §5711(c), and as a result, between 2013 and 2014 medallions appreciated in value from \$450,000 to \$500,000. See PPA’s Answer to Amended Petition for Review, at ¶14; PPA’s Brief in Opposition to Summary Relief, at 38.²⁶ The types of

²⁶ Since these figures were entered into the record, the landscape has drastically changed regarding the value of medallions due to the explosive growth of ride sharing services, which operated illegally at times and largely unregulated for a significant amount of the time during which this matter has been pending. Partial rights taxicabs and medallion taxicabs providing service via hail or dispatch are obviously no longer the only way for people to catch a private ride. The General Assembly enacted Chapter 57A of the Parking Authorities Law, titled “Transportation Network Companies,” in November 2016. See Act of November 4, 2016, P.L. 1222, No. 162, 53 Pa.C.S. §§57A01 - 57A22. This chapter governs ride sharing services, provides PPA has exclusive jurisdiction over service originating in the City, and authorizes PPA to promulgate regulations as it deems necessary. 53 Pa.C.S. §§57A03(d), 57A21(c). Whether or not a medallion is still a

services provided by appellees and medallion taxicab operators are also materially different. While operating in their suburban territories appellees travel longer distances and accumulate mileage at a faster rate than medallion taxicab operators, who primarily provide shorter rides within Center City and its adjoining neighborhoods. In their city territories, appellees primarily provide dispatch services to local residents for trips to the grocery store or doctors' appointments in residential neighborhoods, which are typically underserved, while medallion taxicabs primarily provide services to business persons, tourists, and residents in the City's business, sports, entertainment, university, and historic districts in addition to 30th Street Station, Suburban Station, and Philadelphia International Airport. Although the territories of appellees and medallion cabs overlap, the record shows the material differences between appellees and medallion taxicabs were not eradicated simply by the repeal of the Medallion Act and the promulgation of Act 94. It is these material differences which drive our conclusion that the 2011 regulations, which place an unreasonable and arbitrary burden on appellees without a proper rationale supporting uniform application of the regulations, constitute an arbitrary exercise of PPA's rule-making authority. *Tire Jockey*, 915 A.2d at 1186 (regulation which is "a purely arbitrary execution of the agency's duties or functions" is unreasonable).

We observe that, when promulgating regulations, the PPA may not rely solely upon the fact a taxicab provides service in the City to justify the imposition of uniform regulations. Pursuant to its statutory authority, PPA is required to take into account the "health, safety and general welfare of the people" and the perceived need for improvement in the taxicab industry. 53 Pa.C.S. §5701.1. The Commonwealth Court made detailed findings indicating appellees presented sufficient evidence at trial to

valuable asset is debatable, but the fact remains a medallion may be pledged as collateral.

support their claims the material differences between medallion taxicabs and appellees rendered the challenged regulations an arbitrary exercise of PPA's authority. See *Bucks County Servs. Inc. v. PPA*, No. 584 M.D. 2011, (Pa. Cmwlth. Nov. 28, 2016), slip op. at 16-23, FOF Nos. 43-59. For example, PPA's regulation relating to safety shields inhibited appellees' ability to compete with non-partial rights suburban carriers for both passengers and drivers and was ineffective for its intended purpose. In addition, Section 1011.3 of the 2011 regulations requires the registration of taxicabs with PPA and triggers a concomitant obligation to comply with PPA's regulations regarding payment of annual assessments, inspections, TLD stickers, driver certification and training, vehicle specifications, and meters. It also subjects appellees' taxicabs to PPA out-of-service orders for failure to comply with the 2011 regulations and places substantial financial burdens upon appellees. According to the Commonwealth Court's findings, these financial burdens endanger appellees' ability to provide services in their designated City territories and, when considered in the context of the General Assembly's policy declaration in Section 5701.1, undermines the public interest in having more (not less) taxi service in those areas. PPA's regulations should neither hinder nor endanger appellees' ability to provide such service.

Finally, we reject PPA's claim the Commonwealth Court erred in granting relief to the appellees who did not participate at trial. A regulation adopted pursuant to an agency's legislative rule-making authority is the "the product of an exercise of legislative power by an administrative agency." *Rohrbaugh*, 727 A.2d at 1085. The *Tire Jockey* test determines whether the agency has properly exercised its legislative rule-making power. The Commonwealth Court correctly applied that test to hold the challenged regulations are unreasonable, the PPA failed to properly exercise its authority, and the regulations are thus invalid as to all partial rights taxicabs irrespective of whether or not a particular

operator presented evidence at trial. We therefore affirm the judgment in favor of appellees with respect to the regulations challenged in Counts V-VIII of the Amended Petition for Review.

Accordingly, the order of the Commonwealth Court is reversed in part and affirmed in part. Jurisdiction relinquished.

Justices Baer, Todd, Donohue, Wecht and Mundy join the opinion.

Justice Wecht files a concurring opinion.

Chief Justice Saylor files a concurring and dissenting opinion.