

SUMMARY OF RESOLUTION

Authorization to Issue Fixed Route Shuttle Permit to Lenzner Coach Lines/Coach USA (Franklin Park)

On or about February 23, 2011, Lenzner Coach Lines/Coach USA (Lenzner) filed an application with Port Authority of Allegheny County (Authority) seeking a permit to allow it to operate a private, fixed route shuttle service between certain locations in the Borough of Franklin Park (Franklin Park) and Downtown Pittsburgh beginning on March 28, 2011 (Application).

On March 2, 2011, the Authority issued public advertisements in two local newspapers of general circulation and on the Authority's website notifying the public of Application and inviting the public to submit written comments and to attend and testify at a public hearing scheduled to consider Application on March 14, 2011 at 9:30 a.m. (Hearing).

A committee comprised of Authority staff, and being advised by special outside counsel (Committee), was convened to conduct Hearing, which was transcribed by a certified court reporter after all those testifying were sworn in. Lenzner personnel, along with counsel, appeared at Hearing and offered detailed testimony and documentary evidence in support of Application, including general information on Lenzner and its operations and safety programs, proposed fare structure to provide the service, fleet type and maintenance, detailed routing and scheduling information, proposed hours of operation and a copy of a letter from Franklin Park's Council President indicating that Lenzner had Franklin Park's permission to utilize two of its properties for park and ride purposes.

Committee then called the Authority's director Service Planning & Scheduling (Service Director) to testify regarding Application. Service Director testified that the proposed service would not interfere with the Authority's transit operations in Franklin Park because the Authority will have no service remaining in the area following the Authority's planned service reductions necessitated by the ongoing Statewide Transportation Funding Crisis. Service Director further testified that the proposed service would not interfere with the Authority's transit operation in Downtown Pittsburgh since the Authority's service reductions would greatly reduce the number of buses in Downtown Pittsburgh.

The Assistant Business Agent for Operators of Local 85 of the Amalgamated Transit Union (Union), along with counsel, attended Hearing, but opted not to testify in regards to Application. Several members of the public also appeared and testified, including several who expressed support for Application as a transit alternative following the Authority's planned elimination of its 13J route on March 27, 2011, necessitated by the Statewide Transportation Funding Crisis.

Counsel for Lenzner and counsel for Union were given an opportunity to cross-examine all witnesses who appeared and testified, as well as make brief closing arguments in support of and opposition to, respectively, Application. All parties were given the opportunity to submit documentary evidence. Committee concluded Hearing by advising Lenzner, Union and all those in attendance that Committee would only consider the record made at Hearing in its deliberations and would then make a detailed, written recommendation to the Authority's Board pertaining to granting or denying Application.

Based upon these deliberations, and after due consideration, Committee authored an Opinion, attached to the resolution as Exhibit A, which recommends that the Board grant Application for the reasons stated in the Opinion and otherwise established on the record at Hearing.

This resolution approves Application and authorizes the chief executive officer, assistant general manager Service Planning & Development and/or assistant general manager Legal & Corporate Services, to issue a permit to Lenzner to operate private, fixed route shuttle service between certain locations in Franklin Park and Downtown Pittsburgh in accordance with the terms and conditions in the Opinion, to distribute copies of this resolution and the Opinion to Lenzner, Union and any other party requesting a copy of same and to take any and all other actions necessary to carry out the intent and purpose of this resolution.

3/26/11
J. Letwin

RESOLUTION

WHEREAS, on or about February 23, 2011, Lenzner Coach Lines/Coach USA (Lenzner) filed an application with Port Authority of Allegheny County (Authority) seeking a permit to allow it to operate a private, fixed route shuttle service between certain locations in the Borough of Franklin Park (Franklin Park) and Downtown Pittsburgh beginning on March 28, 2011 (Application); and

WHEREAS, on March 2, 2011, the Authority issued public advertisements in two local newspapers of general circulation and on the Authority's website notifying the public of Application and inviting the public to submit written comments and to attend and testify at a public hearing scheduled to consider Application on March 14, 2011 at 9:30 a.m. (Hearing); and

WHEREAS, a committee comprised of Authority staff, and being advised by special outside counsel (Committee), was convened to conduct Hearing, which was transcribed by a certified court reporter after all those testifying were sworn in; and

WHEREAS, Committee received detailed testimony and documentary evidence from Lenzner in support of Application, along with testimony from the Authority's director Service Planning & Scheduling, Franklin Park's Mayor and several members of the public; and

WHEREAS, the Assistant Business Agent for Operators of Local 85 of the Amalgamated Transit Union (Union), along with counsel, attended Hearing, but opted not to testify in regards to Application; and

WHEREAS, both counsel for Lenzner and counsel for Union were given the opportunity to cross-examine all those individuals who testified at Hearing and to make brief closing arguments in support of and opposition to, respectively, Application; and

WHEREAS, based solely upon the testimony, arguments and documentary evidence received at Hearing, Committee deliberated and duly considered the merits of Application and has rendered a detailed Opinion concerning the merits of Application recommending that the applicant be granted a permit for the reasons set forth in the Opinion attached hereto as Exhibit A (10 pages) and otherwise memorialized in the record of Hearing; and

WHEREAS, after due consideration and review of the Opinion and in the best interest of the public in light of the Authority's planned March 27, 2011 service

reductions necessitated by the ongoing Statewide Transportation Funding Crisis, the Board agrees with and adopts Committee's recommendation to grant Application.

NOW, THEREFORE, BE IT RESOLVED, that Application filed by Lenzner for a permit to provide private, fixed route shuttle service between certain locations in Franklin Park and Downtown Pittsburgh beginning on March 28, 2011 is hereby approved subject to the conditions set forth in the Opinion attached hereto as Exhibit A.

RESOLVED FURTHER, that the permit granted to Lenzner by this resolution is valid only if the conditions set forth in the attached Opinion are met within 30 days of the date of this resolution.

RESOLVED FURTHER, that the chief executive officer, assistant general manager Service Planning and Development, and/or assistant general manager Legal & Corporate Services, be, and hereby are, directed to distribute copies of this resolution and the Opinion to Lenzner, Union and any other party that may request a copy of same.

RESOLVED FURTHER, that the chief executive officer, assistant general manager Service Planning & Development, and/or assistant general manager Legal & Corporate Services, be, and hereby are, authorized to approve or reject any service modification request pertaining to the permit being issued to Lenzner based upon the conditions set forth in the Opinion attached hereto as Exhibit A and to take any and all other actions necessary and proper to carry out the purpose and intent of this resolution.

EXHIBIT A

IN RE: APPLICATION OF LENZNER COACH LINES/COACH USA (Franklin Park)

On or about February 23, 2011, Lenzner Coach Lines/Coach USA (Lenzner) filed an application with Port Authority of Allegheny County (Authority) seeking a permit that would allow it to operate private, fixed route shuttle service between certain locations in the Borough of Franklin Park (Franklin Park) and Downtown Pittsburgh beginning on March 28, 2011 (Application).

Authority has jurisdiction over the subject matter of the Application pursuant to Section 13.1 of the Second Class County Port Authority Act of April 6, 1956, P.L. (1955) 1414, as amended, 55 P.S. §563.1, and the decision of the Supreme Court of Pennsylvania in *Port Authority of Allegheny County v. Pennsylvania Public Utility Commission*, 494 Pa. 250, 431 A.2d 243 (1981), in that the service is fixed route shuttle service to be rendered between points in Allegheny County and is neither school bus, taxicab service or any other service which Authority does not currently exercise exclusive jurisdiction and control over.

On March 2, 2011, Authority issued public advertisements in the *Pittsburgh Post-Gazette*, the *Pittsburgh Tribune-Review* and on Authority's website notifying the public of the Application and inviting the public to submit written comments and to attend and testify at a public hearing to consider the Application on March 14, 2011 at 9:30 a.m. in the Board Room at Authority's offices in the Heinz 57 Center (Hearing). A committee comprised of Authority staff (Committee) and being advised by special outside counsel was convened to conduct the Hearing, which was transcribed by a certified court reporter after all those testifying were sworn in. The Committee was chaired by Michael J. Cetra, Authority's Assistant General Manager of Legal and Corporate Services and General Counsel. Other Committee members included Cathy Singleton, Assistant Manager of Data and Passenger Amenities; Beverly Parker, Information Administrator; Darcy Cleaver, Supervisor of Data and Passenger Amenities; and Richard Wojnar, Director of Road Operations and Training. Sandy Garfinkel, from the law firm of Eckert Seamans Cherin & Mellott, LLC, served as special outside counsel to the Committee.

The Hearing was conducted in accordance with the applicable provisions of Chapter 5 of the Pennsylvania Administrative Code relating to hearing practice and procedure before Commonwealth agencies, 2 Pa. C.S.A. § 501, et seq. Before calling individuals to testify and submit documentary evidence, the Committee introduced five Committee (5) exhibits into the record as follows: (1) Lenzner's permit application letter dated February 23, 2011; (2) Authority's advertisements providing public notice of the Hearing and inviting written comments and live testimony; (3) Lenzner's \$1,200 check paying Authority's permit application fee; (4) Lenzner's Certificate of Liability Insurance as reviewed and approved by Authority's Insurance Administrator; and (5) copies of all four letters received in response to Lenzner's Application.

Patrick J. McMahon, President and Business Agent for Local 85 of the Amalgamated Transit Union (Union) submitted a letter dated March 4, 2011, indicating that he (with counsel) wanted to attend and testify at the Hearing. Mr. McMahon did not attend the Hearing, but Stephen Palonis, the Union's Assistant Business Agent for Operators, appeared in Mr. McMahon's place and indicated that he did not want to testify when given the opportunity to do so. Mr. Jim Porcelli, of Pittsburgh, submitted a letter dated March 8, 2011, in which he indicated that he wanted to participate in the Hearing. While Mr. Porcelli appeared at the Hearing, he informed a Port Authority staff member during a break that his "concerns had been addressed by the questions" and he would not be testifying since he had to leave early. All others who submitted letters appeared and testified at the Hearing, and their respective comments are therefore summarized below in the order that each testified.

After entering its Exhibits into the record, the Committee then requested that those individuals appearing at the Hearing on behalf of Lenzner to testify and offer documentary evidence in support of Lenzner's Application identify themselves. Paul Guarnieri, from the law firm of Malone Middleman, identified himself as Lenzner's counsel. Charles Lenzner identified himself as President and General Manager of Lenzner and Roy Hoffman identified himself as Manager of Lenzner's Operations. Lenzner provided a binder of information in support of its Application, which was marked as Lenzner Exhibit "A"

and a supplemental packet of rider survey information marked as Lenzner Exhibit “B” for the Committee’s reference during Mr. Lenzner’s testimony.

Mr. Lenzner offered detailed testimony, including references to and acknowledgments of the accuracy of information contained in Exhibits A and B, in support of Lenzner’s Application. This testimony included general information on Lenzner and its operations, training and safety programs, Lenzner’s fleet type and maintenance program, proposed fare structure to provide the proposed fixed route service, proposed hours of operation, detailed routing and scheduling information and a copy of a letter from Franklin Park’s Council President indicating that Lenzner had been granted permission from Franklin Park to utilize two of its properties – the Borough Municipal Building located at 2344 West Ingomar Road and Corporate Drive, a borough owned public street located off of Brandt School Road in Wexford – for park and ride purposes and pick up and drop off of passengers for the proposed services.

Lenzner Coach Lines is a corporation with its principal place of business and vehicle maintenance facility located at 110 Lenzner Court, Sewickley, PA. 15143. Lenzner also has a shuttle operations and vehicle maintenance facility located at 1301 Beaver Avenue, Pittsburgh, PA 15233. Lenzner has been in business for approximately 40 years, providing a wide variety of tours and fixed route shuttle services in Allegheny County through other operating permits that it has been previously issued by the Authority. Lenzner has approximately 120 full-time employees, including drivers, maintenance and office personnel.

Lenzner Coach Lines’ parent company is Coach USA. Coach USA submitted a letter signed by its President and Chief Operating Officer, contained in Exhibit A, indicating that Lenzner has its parent company’s full authority and support to provide fixed route shuttle service on any and all routes being eliminated by Authority as a result of the ongoing Statewide Transportation Funding Crisis.

Lenzner entered revised fare, schedule and routing information into evidence, as contained in Exhibit A of Lenzner’s documentary submittals. Lenzner will sell monthly passes, via passenger reservations, Monday through Friday from 9:00 a.m. through 4 p.m. in the order in which reservations are made/sold. Franklin Park monthly reservations will be based upon a \$10.00 round trip fare per day. A one-way reservation will be based upon a \$5.00 per day fare. Passengers will board and identify themselves to the driver via a ticket and/or photo identification so drivers can track daily ridership numbers.

Traveling inbound, all buses will begin service at the Franklin Park Borough Building Park and Ride lot. Buses will leave this lot located on West Ingomar Road and continue on West Ingomar Road until turning left onto Brandt School Road. After stopping to pick up passengers at Corporate Drive, buses will then continue on Brandt School Road until turning left on Wexford Bayne Road. The bus will then turn south on I-79 to South on I-279 and utilize the HOV lanes on I-279 to travel into Downtown Pittsburgh. Lenzner’s buses will stop to discharge passengers in Downtown Pittsburgh on Penn Avenue at 5th Avenue and Penn Avenue at 6th Street.

Traveling outbound, the buses will follow the reverse route with the two Downtown locations serving as pick up points and the two Franklin Park locations serving as drop off points for passengers. Lenzner does not intend to have any layovers for buses in the course of operating its proposed fixed route shuttle service.

Proposed scheduling for Lenzner’s service would be as follows, Monday through Friday with no weekend service:

<i>Franklin Park Municipal Bldg. Pick Up</i>	<i>Corporate Drive at Brandt School Rd. Pick Up</i>	<i>Penn and 5th Departure</i>	<i>Penn and 6th Departure</i>
5:45 a.m.	5:53 a.m.	3:40 p.m.	3:43 p.m.
6:30 a.m.	6:38 a.m.	4:10 p.m.	4:13 p.m.
7:00 a.m.	7:08 a.m.	5:00 p.m.	5:03 p.m.
7:45 a.m.	7:53 a.m.	5:35 p.m.	5:38 p.m.

Mr. Lenzner acknowledged that Lenzner, if a permit were granted, would have to seek the Authority's permission to modify the fares, routing and/or scheduling before being able to do so.

Lenzner also submitted a letter, contained in Exhibit A, from Franklin Park's Council President indicating that Lenzner had been granted permission by Franklin Park to utilize two (2) of its properties – the Borough Municipal Building located at 2344 West Ingomar Road and Corporate Drive, a borough owned public street located off of Brandt School Road in Wexford – for the purpose of passenger parking and pick up/drop off for the proposed Lenzner service.

Lenzner personnel also testified and offered detailed documents into evidence detailing its hiring and training of employees, proposed fleet for the service, maintenance program and other evidence deemed relevant by the Committee for consideration of the merits of Lenzner's Application. Mr. Lenzner directed the Committee to pages 26 through 33 of the binder submitted by Lenzner, as Exhibit A of the record, and discussed the screening process Lenzner conducted prior to hiring new drivers. This process involves management review of qualifications, a criminal background and driving record check and pre-employment drug testing. Mr. Lenzner then testified about Lenzner's new driver training program, which includes both on-the-road and classroom components on various topics such as defensive driving, Americans with Disabilities Act proficiency, emergency procedures and customer relations. Current drivers are also provided refresher training every six (6) months and on an as needed basis if a complaint is filed or other problems are noted by management.

Counsel for Mr. Lenzner directed the Committee's attention to pages 36 through 37 of the binder submitted as Exhibit A, and Mr. Lenzner testified about the various components of Lenzner's Safety and Health Program. Mr. Lenzner stressed that this program includes vigorous screening and testing for vehicle maintenance personnel, and similar to Lenzner's ongoing training for its drivers, maintenance personnel undergo continuous training on the proper inspection and maintenance of vehicles. Also, all Lenzner personnel undergo periodic performance evaluations to gauge their safety habits and abilities.

Regarding its maintenance program, Mr. Lenzner testified that Lenzner has a certified inspection station at its 110 Lenzner Court location that operates 24 hours a day/7 days a week. Each Lenzner bus is inspected yearly by one of Lenzner's five licensed vehicle inspectors identified on page 18 of Exhibit A. Regular service and maintenance are performed on vehicles about every 2,500 to 3,000 miles. Lenzner's maintenance program, as more thoroughly detailed on pages 37 through 44 of the binder submitted by Lenzner as Exhibit A, consists of ongoing safety inspections varying from an A level inspection every 3,000 miles to a C level inspection at 30,000 miles. Mr. Lenzner also directed the Committee's attention to sample random vehicle inspections conducted on Lenzner's vehicle fleet by local law enforcement and/or the Public Utility Commission (PUC).

Mr. Lenzner testified that Lenzner has a random drug and alcohol testing program in place. All Lenzner employees are drug tested and undergo physical exams before being hired as part of Lenzner's overall safety program. In addition to pre-hire and random drug and alcohol testing, Lenzner employees are also tested in the event of a vehicle accident or other incident. Concentra is Lenzner's contactor for conducting its pre-hire and post-hire drug and alcohol testing, and Mr. Lenzner confirmed that Lenzner's drug and alcohol program is conducted in compliance with all federal and state laws.

Lenzner proposes to use a variety of its vehicle fleet to provide the proposed Franklin Park/Downtown Pittsburgh Service, including its Van Hool Bus, the MCI and smaller Chevy or Ford shuttles, if needed. Mr. Lenzner confirmed that photographs contained in the binder submitted as Exhibit A depicted the types of vehicles Lenzner would use to provide the service. The largest buses have seating capacity for 57 passengers and the smaller shuttles have a seating capacity of 25, and all are wheelchair accessible and have priority seating for securing wheelchairs. Lenzner allows service animals onboard its buses, and all Lenzner employees receive new hire and ongoing Americans with Disabilities Act training.

Lenzner drivers are required to wear white shirts with ties, and all employees have to wear identification badges that are visible to the public. Mr. Lenzner confirmed that page 16 of the binder

marked as Exhibit A and submitted by Lenzner contained a sample photograph of the Lenzner identification badge for its drivers.

Mr. Lenzner also testified that Lenzner already holds multiple fixed route shuttle permits issued to it by the Authority, including for University of Pittsburgh (since 1993) and Robert Morris University (since 2004) student shuttles. Lenzner's most recently issued permit allows it to provide fixed route shuttle services between the Rivers Casino and various Downtown Pittsburgh hotels. Mr. Lenzner confirmed that none of his permits have ever been terminated or suspended by the Authority for breach of any operating permit conditions.

Mr. Lenzner testified about several other matters relevant to the merits of Lenzner's Application, including the following:

- Lenzner adjusted its proposed schedule for the proposed service and projected ridership based upon surveys prepared by Lenzner and passed out by community members, with approximately 100 signatures collected and indicating times passengers would want to be picked up. Mr. Lenzner noted the survey information was contained at the end of the binder submitted as Exhibit A and in the additional documentation submitted as Exhibit B in support of Lenzner's Application.
- Lenzner operates its customer service hotline (412-761-7000) 24 hours a day, 7 days a week to respond to customer complaints and questions. Complaints are responded to by Tim Zapparo (Manager of Scheduled Route Service) and Mike Ferianc (Head of Safety).
- If demand is higher than anticipated, Lenzner has enough of a fleet capacity to respond to same. If demand is lower than anticipated and/or Lenzner opts to discontinue to service, Lenzner would provide the public with thirty (30) days notice and refund any remaining value on tickets or passes sold.
- Mr. Lenzner understands that any permit issued by the Authority would be limited to its jurisdictional area within Allegheny County, and that the PUC would have to issue an operating permit for any proposed service outside of Allegheny County.
- Lenzner presented a current copy of its Certificate of Liability Insurance, which was entered into the record as Committee Exhibit 4, and acknowledged that if Lenzner's permit were granted, Lenzner would be required to maintain this insurance and ensure that Authority was a named additional insured.
- Mr. Lenzner confirmed that Lenzner had paid its \$1,200 application fee and that it understood and would pay the yearly permit fee of \$3,000, if its Application is granted.
- Mr. Lenzner acknowledged Lenzner's obligation to execute an affidavit binding it to Authority's conditions for issuing an operating permit.
- Mr. Lenzner acknowledged that Authority, in accordance with its statutory powers, could suspend or revoke his operating permit at any time and for any reason, including if the proposed service would interfere with Authority's operations.
- Mr. Lenzner also testified that he understood that Lenzner would be obligated to indemnify, defend and hold Authority harmless if Authority issued Lenzner an operating permit.

Last, upon direct questioning by the Committee, Mr. Lenzner stated the following:

- Authority did not request that Lenzner provide the fixed route service it proposes to provide in its Application.
- Lenzner is not providing the service on behalf or for the benefit of the Authority.
- Lenzner is not party to a contract or any other type of agreement with Authority to provide any type of transit services for Authority's benefit.
- Lenzner is not receiving, and will not receive, any sort of payment from Authority for providing the proposed Franklin Park/Downtown Pittsburgh service.
- Lenzner is not going to receive any subsidies from any government agencies or private companies to operate the proposed service, and there are no current discussions between Lenzner and any agencies or companies regarding operating subsidies.

After Mr. Lenzner was directly questioned by the Committee, Lenzner's counsel (Paul Guarnieri) was given the opportunity to directly examine him. In response to counsel's questions, Mr. Lenzner testified in more detail about the existing fixed route permits issued to him by the Authority, Lenzner ultimately determined its proposed schedule for operating the service based upon the rider surveys, and approximately thirty (30) former Authority drivers are employed as Lenzner drivers.

Counsel for the Union, Joseph Pass, then was given the opportunity to cross-examine Mr. Lenzner. In response to Mr. Pass' cross-examination, Mr. Lenzner testified as follows:

- To the best of Mr. Lenzner's knowledge, none of the former Authority drivers working for Lenzner were terminated by the Authority.
- Lenzner operates its service for the University of Pittsburgh (Pitt) as a fixed route service based upon stop locations established by Pitt. Pitt pays Lenzner to operate the service based upon an hourly rate and regardless of the number of students who use the service.
- Lenzner operates its Robert Morris University (RMU) service to transport students from Downtown Pittsburgh to RMU's Moon campus. RMU pays Lenzner to operate the service.
- Members of the public utilizing Lenzner's Casino shuttle service are charged \$10.00 and receive a \$10.00 coupon for use at the Rivers Casino. Lenzner has no written agreement with the Rivers Casino to provide this service.
- Mr. Lenzner understands, if the Board approves his permit request, that he must agree to certain conditions to receive and maintain the operating permit. He never discussed a "13(c) arrangement" with the Authority, and would not seek a permit if it were a condition to obtain one. Mr. Lenzner noted that he is seeking a permit and is "not a contractor to the Port Authority."
- Lenzner's service will be reservation only; no walk-on riders will be accepted.
- While Lenzner's intends for the service to be seated passengers only, if a passenger needs to get home early, standees (who have reservations) may be allowed.
- Mr. Lenzner did not submit Lenzner's financial reports to the Authority because "[i]t's not part of the application[.]"
- Lenzner's driver training program and driving trainers are not independently audited by any outside organization. However, his mechanics are licensed and certified, and the American Bus Association and United Motor Coach Association provide ongoing education to Lenzner's training personnel.
- Lenzner has current employees in place to operate the proposed service beginning on March 28, but will seek to hire additional employees to ensure Lenzner maintains its usual pool of reserve drivers for other services/routes. Lenzner drivers start at a wage of \$12.00 to \$15.00 an hour.
- Mr. Lenzner never had any discussion with the Authority about the routes being eliminated, the number of passengers or routing of said routes or about park and ride lots.
- Upon questioning by Mr. Pass in regards to a PUC complaint filed against a Lenzner-affiliated entity, Transportation Management Services, Mr. Lenzner responded that his understanding was the complaint had to do with a failure to file appropriate paperwork with the PUC when Lenzner transferred certain airport service to another entity, Pittsburgh Transportation Group. To the best of Mr. Lenzner's knowledge, the PUC never issued any findings as a result of this complaint because it was just a paperwork issue that had to be corrected. Counsel for Lenzner objected to this line of questioning, but the Committee chairperson overruled said objection.
- Mr. Lenzner confirmed that Lenzner would not be offering a discounted fare to senior citizens or the disabled at this time.
- Mr. Pass also inquired about Mr. Lenzner's affiliation with and civil fine arising out of Mr. Lenzner's service as a board member for NSD Bancorp. Upon objection by counsel for Lenzner, arguments of counsel, and inquiries by the Committee chairperson, the objection was sustained as the line of questioning was deemed irrelevant since NSD Bancorp was not affiliated with Lenzner in any manner and did not provide transportation services of any manner.

Mr. Guarneri then briefly conducted re-direct of Mr. Lenzner, and Mr. Pass briefly conducted re-cross examination of Mr. Lenzner. Upon additional questioning by Committee members, Mr. Lenzner clarified that he had drivers licensed, trained and in place to start service on March 28, 2011 and that he understood his obligation to provide monthly ridership data to the Authority if granted a permit. Mr. Lenzner's testimony then concluded, and Mr. Guarneri moved for the admission of Lenzner Exhibits A (the binder) and B (the supplemental survey information). Both Exhibits were admitted in the record by the Committee.

The Committee then called Scott Vetere, Authority's Director of Service Planning & Scheduling, to testify. Mr. Vetere testified as follows:

- In his capacity as Director of Service Planning & Scheduling, he has direct knowledge about the route and services offered by the Authority to the public, both currently and those that will be offered after the service reductions scheduled to take effect on March 27, 2011, due to the ongoing Statewide Transportation Funding Crisis.
- Upon hearing Mr. Lenzner's testimony regarding his proposed service, Mr. Vetere stated that it would not interfere with Authority's operations. It would not interfere with Authority's operations in Franklin Park because Authority will have no bus operations in Franklin Park after March 27. It will not interfere with Authority's operations in Downtown Pittsburgh because Authority will be reducing the number of buses that it has Downtown in a much greater number than the number of buses Mr. Lenzner's service would propose to bring into Downtown.
- In Mr. Vetere's opinion, the proposed service would be a benefit to the public because "it is an area we [the Authority] are vacating on transit services."

Following Mr. Vetere's testimony, several members of the public testified as follows:

- Bonnie Bock, of Wexford, testified in support of Lenzner's Application as a transportation alternative following the Authority March 27 service reductions. Ms. Bock noted that she is willing to pay more for transit services and would be willing to pay more to Authority if it continued its service. Ms. Bock also noted that she "has no problem with the [Authority] bus service as it currently is or the PAT bus drivers or the Union people[.]" but "we [the riders] really, really need the service. It would be a benefit to quite [a] bit of people who really have no other option."
- Dennis O'Keefe, Mayor of Franklin Park, testified that the elimination of service by the Authority in the Franklin Park area would leave a huge transportation gap in "one of the fastest growing areas in Allegheny County" and that Franklin Park strongly supported Lenzner's Application because Lenzner "is offering an affordable alternative service[.]"
- Upon cross-examination by Mr. Pass, Mayor O'Keefe noted that his preference would be that the Authority maintain its current service, but that he believed Franklin Park residents (including senior citizens and disabled residents) would pay the higher fare proposed by Lenzner to have transit service available to the community. Mayor O'Keefe never had any substantive communications with Lenzner and never spoke to anyone at Port Authority prior to appearing and testifying at the Hearing. In his capacity as Mayor of Franklin Park, Mayor O'Keefe confirmed Lenzner's permission to utilize the two (2) proposed park and ride sites owned by Franklin Park.
- Jonathan Robison, President of the Allegheny County Transit Council (ACTC), next testified and initially noted that he was testifying in the Hearing "as an individual transit rider" and not in his capacity as President of the ACTC since ACTC had not yet adopted a formal position on the Lenzner permit applications. Mr. Robison expressed his opinion that if the Board grants the permit application, then the Authority needs to implement conditions for rider input and interface between the Lenzner and Authority systems. If the Board denies the permit application, then the Authority needs to postpone the planned 15% service reductions. Mr. Robison further suggested that the Authority seek contributions from municipalities to maintain bus service in areas that would otherwise lose such service on March 27. Upon questioning by the Committee

chairperson, Mr. Robison indicated that he planned to register to speak directly to the Board on March 25 and would be in a position to express ACTC's formal position on Lenzner's permit applications at that time.

- The last registered individual to testify was James D. Love, of McKees Rocks. Mr. Love testified in opposition to Lenzner's Application because he believed that the proposed fare Mr. Lenzner would charge was "unreasonable" and that the Authority should not "break" the Union or move towards privatization.

Both Mr. Guarnieri and Mr. Pass were given the opportunity to cross-examine all of the above-referenced witnesses who testified at the conclusion of each individual's direct testimony. Mr. Pass then put an "objection" on the record on behalf of the Union to granting the permit. Mr. Pass indicated several reasons for the Union's opposition, including 1) Lenzner's driver/safety training program is never audited by an outside organization; 2) Mr. Lenzner did not previously indicate that a PUC complaint had been filed against a Lenzner-affiliated entity, and now acknowledged a complaint had been filed; and 3) the location of handicap seating in the back of Lenzner's buses is a "dangerous proposition." In response, Mr. Guarnieri argued that 1) Port Authority has had the opportunity for several years to monitor and oversee Lenzner's operations due to Lenzner holding three separate fixed route permits from the Authority; 2) the PUC complaint was a "charge" and not an adjudication, and it is irrelevant; 3) Lenzner's bus fleet and the location of wheelchair/priority seating is a manufacturer specification and is fully in compliance with the ADA; and 4) Mr. Pass' suggestion that Lenzner's services are "unsafe" is unsupported by any evidence/allegations presented by the Union. In response, Mr. Pass reiterated the Union's belief that if Lenzner does not sign or adhere to a 13(c) agreement, then Port Authority could lose millions in federal funding. Mr. Guarnieri responded that this argument was misplaced because the evidence clearly established that Lenzner was merely seeking an operating permit from Lenzner, and he is not entering into a contract to provide service for the Authority or a "successor" within the meaning of 13(c).

Following counsels' arguments, the Committee chairman advised those in attendance that the Committee would deliberate based upon the record before it (and the cross-functional Committee's personal knowledge and experience) and make a detailed, written recommendation to Authority's Board (Board). The Board would then make a final decision to approve or deny Lenzner's Application at its regularly scheduled public meeting on March 25, 2011. The Committee chairman urged those interested in speaking directly to the Board about this matter to register to do so.

Based upon the record presented to it, as set forth more fully above and contained in the Hearing transcript, and the Committee's due consideration and deliberations, the Committee unanimously recommends that Lenzner's Application be granted to provide Franklin Park/Downtown Pittsburgh fixed route shuttle service because Lenzner produced sufficient evidence to support the merits of its Application and because it is clear that the good of the public will be served by allowing Lenzner to operate this service in an area where Authority will no longer be providing transit service post-March 27, 2011. The Committee notes, without reservation to Authority's right to express additional reasons, justifications and legal defenses for the Committee's Opinion and recommendation, that it found Mr. Pass/the Union's arguments to be without merit because 1) Authority's own bus training and safety program is not subject to auditing by an outside agency (versus rail, which is statutorily overseen by the Pennsylvania Department of Transportation); 2) many of Authority's own buses (the 1900 series buses and small transit vehicles) have middle to rear seating locations for wheelchairs; 3) beyond one alleged PUC complaint concerning the transfer of a permit, the Union produced no other evidence of any complaints or actions filed against Lenzner or a Lenzner-affiliated entity; the Union produced no cognizable evidence substantiating its claim that Lenzner would operate this service in an unsafe manner; 4) Lenzner currently holds three (3) other fixed route transit permits from the Authority, and the Authority has no knowledge that Lenzner has been non-compliant with the conditions of those permits, and none have ever been suspended or terminated by the Authority; 5) the Union's 13(c) argument is without merit; Lenzner is not a "successor or assign" of Authority; rather, Lenzner is merely obtaining an operating permit from Authority as required by law; and 6) most importantly, the public need for a transit alternative in the Franklin Park area post-Authority's March 27 service reductions weighs heavily in favor of granting Lenzner's Application.

This permit may not be transferred and does not confer any exclusive right to render service. Additionally the permit will not be valid until Lenzner signifies that it will comply with the following terms and conditions for operation, in a form approved by Authority:

1. No service shall be provided to any other entity or on any route or in any manner other than that authorized herein without the prior approval of the Chief Executive Officer, Assistant General Manager of Service Planning and Development or Assistant General Manager of Legal and Corporate Services of Authority. The foregoing Authority officers are hereby authorized and fully empowered to permit Lenzner to provide additional fixed route shuttle service, including service for other entities, if such additional service would not interfere with Authority's ongoing, planned or future public transit services in the Marshall Township and/or Downtown Pittsburgh areas. In the event that a request to provide such additional service is denied, Lenzner may request a hearing pursuant to Authority's customary practice and procedure. No right, power or privilege is or shall be granted under this permit beyond the right to provide fixed route shuttle service as set forth in this Opinion.
2. All vehicles used in this service by Lenzner shall bear valid Pennsylvania inspection stickers and shall at all times comply with the Pennsylvania Motor Vehicle Inspection Program as established by the Vehicle Code, Act of 1976, June 17, P.L. 162, No. 81, Sec. 1, 75 Pa. C.S.A. 101, *et seq.*, and those regulations promulgated pursuant thereto. Before commencing service under this permit, Lenzner shall provide an executed Affidavit to the Authority stating that all vehicles used in the service meet the vehicle inspection requirements as stated above.
3. All drivers providing service under this permit shall have in their possession a valid Pennsylvania Motor Vehicle Operators' License for the type of vehicle operated. Furthermore, before commencing service under this permit, Lenzner shall provide an Affidavit or other written agreement acceptable to Authority stating that all of the drivers utilized in the service meet the requirements for operators of motor vehicles in Pennsylvania established by the Vehicle Code, Act of 1976, June 17, P.L. 162, No. 81, Sec. 1, 75 Pa. C.S.A. 101, *et seq.*, and those regulations promulgated pursuant thereto.
4. Before commencing service under this permit, Lenzner shall, in a form acceptable to Authority, signify that it will defend any and all suits brought against Authority and/or its members, officers and employees by anyone, including, but not limited to, Lenzner employees, unions representing Authority's employees or Authority employees, for injuries, including death, loss, damage or costs, including attorneys' fees, alleged to be caused by, through or in connection with the issuance, existence, exercise and/or use of the rights authorized by Authority granting this fixed route shuttle permit, and shall defend and hold harmless, Authority and its members, officers and employees from and against any and all claims, suits, demands and costs, including attorneys' fees, including, but not limited to, those made by Lenzner employees, unions representing Authority's employees or Authority employees, arising out of, or relating to, the use of the rights authorized by Authority; and to pay, liquidate and discharge any and all valid claims, demands, or judgments (including all costs of suits and reasonable attorneys' fees, if required) including those made by Lenzner employees, unions representing Authority's employees or Authority employees, for injury, loss or damage, including consequential damages, punitive or treble damages, to any and all persons, or property caused by, growing out of, or incidental to the existence, use or exercise of the rights authorized by Authority granting this fixed route shuttle permit to Lenzner. This requirement to indemnify, defend and hold Authority harmless shall extend to any and all claims of any and all nature or manner, including, but not limited to, any alleged claims by any union representing Authority's employees or Authority employees that Lenzner's permit or operations commenced thereunder violate section 13(c) of the Federal Transit Act or any other federal law, statute or regulation.

5. For the period authorized and the entire time Lenzner maintains its permit, Lenzner shall maintain workers' compensation insurance in accordance with the laws of the Commonwealth of Pennsylvania and Comprehensive General Liability Insurance, including contractual liability, in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage combined; and Business Automobile Liability Insurance in an amount not less than \$1,000,000 per accident for service provided in vehicles with 28 passenger seats or less and not less than \$5,000,000 per accident for service provided in vehicles with 29 passenger seats or more, for bodily injury and property damage combined. Authority shall be named as an additional insured on any such additional coverage. Prior to initiating service under this permit, Lenzner shall submit current certificates of such insurance to Authority. Said insurance shall provide that Authority shall receive thirty (30) days' prior written notice in the event of change or cancellation of any of the insurance required herein.
6. Except as otherwise provided herein, this permit shall be valid from one year of the date of issue, March 25, 2011, and may not be transferred. It shall be the responsibility of Lenzner to confirm its intent to maintain this permit annually, at least thirty (30) days prior to the expiration date of the permit. It shall be within the Authority's sole option and discretion to renew the permit. At that time, Lenzner shall provide Authority with those Affidavits, agreements and/or certificates described above and pay a non-refundable \$3,000 permitting fee.
7. Lenzner acknowledges that this fixed route shuttle permit can be revoked, in whole or in part, by Authority, at any time and for any reason at Authority's sole discretion, including (but not limited to) order of court, operation of law or Authority's conclusion that Lenzner's fixed route service is interfering with Authority's ongoing or planned operations. If Lenzner is advised of such revocation, Lenzner shall immediately cease operations and Authority will refund a pro-rata portion of Lenzner's permit fee paid at the time of revocation. In the event of a revocation at Authority's discretion, Lenzner may request a hearing before Authority personnel to appeal said revocation.
8. Upon request by Authority, Lenzner shall make available for inspection and/or auditing any and all operational, safety, maintenance or other records pertaining to its provision of fixed route shuttle services under the permit. All such records shall be maintained by Lenzner for a minimum of three (3) years. Additionally, on a monthly basis, Lenzner shall submit monthly ridership information for the fixed route service Lenzner provides pursuant to the permit to Authority's Information Administrator or other designee.
9. Lenzner shall operate in accordance with the provisions of this decision at all times. Authority assumes no responsibility or liability to anyone for the failure of Lenzner to comply with said provisions.
10. In the event Lenzner is alleged to be in violation of the provisions of this Opinion or the issued fixed route shuttle permit, Lenzner will be notified of the charge and a hearing will be scheduled. If it is determined that Lenzner has committed a violation, penalties will be assessed. Such penalties may include the revocation of this permit.
11. The rights granted by this permit shall be non-exclusive. Authority may issue permits for the same service and the same geographic area to other interested carriers.
12. Lenzner shall comply with all conditions set forth in this Opinion within thirty (30) days of the date of the Resolution accompanying this Opinion. The failure of Lenzner to fully comply within thirty (30) days shall result in any authority granted by the permit to be null and void, at the sole discretion of the Authority's Chief Executive Officer in consultation with the Assistant General Manager of Service Planning and Development and Assistant General Manager of Legal and Corporate Services.

13. Any employee or agent of Lenzner providing or overseeing the fixed route shuttle service under this permit is not and shall not be considered an employee, agent, contractor, sub-contractor, successor or assign of Authority. Lenzner shall not be considered an agent, contractor, sub-contractor, successor and/or assign of Authority. Rather, Lenzner shall be considered the holder of a non-exclusive operating permit issued in accordance with the regulatory powers afforded to the Authority pursuant to the Second Class County Port Authority Act, as amended.