

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION :  
BUREAU OF TRANSPORTATION AND SAFETY :  
 :  
 :  
 vs. : Docket No. C-2011-2212501  
 :  
 :  
 YELLOW CAB COMPANY OF PITTSBURGH, :

**RESPONSE TO MOTION TO STRIKE ANSWER AND NEW MATTER  
IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE ANSWER AND NEW  
MATTER, NUNC PRO TUNC**

AND NOW, comes Respondent, The Yellow Cab Company of Pittsburgh (hereinafter “Yellow Cab”), by and through its counsel, Ray F. Middleman, Esquire and Malone Middleman, P.C., and files the within Response to Motion to Strike Answer and New Matter as set forth herein:

**ANSWER**

1. It is admitted that Bureau of Investigation and Enforcement (“BIE”) filed a Complaint at the above docket number. It is denied that Respondent received the Complaint on November 29, 2011 and, to the contrary, it is averred that the Complaint was received several days thereafter.

2. Respondent avers that the Complaint at issue involves allegations of unreasonable service which required investigation and inquiry of a lease driver who no longer leases a cab from Respondent. Therefore, Respondent was not able to contact the driver in as expeditious manner as would otherwise occur with an active lease driver.

3. Additionally, and most significantly, the BIE brought allegations – for the first time in recent memory – of 12 tariff violations on two (2) separate dates in November 2010 and December 2010. Those dates are nearly one year prior to the date that the Complaint was filed.

4. Investigation of these alleged tariff violations involved retrieval of lease information, manifests and charge card receipts for the dates in question. This information is warehoused in a fashion that requires some amount of time to retrieve.

5. These documents were sought as expeditiously as possible, during the Holiday Season, and required significant manual effort to sort and organize by cab number and driver number.

6. It took counsel several days just to obtain the correct charge slips for the dates in question. Thereafter, the charge slips for the driver and the trips at issue had to be identified and analyzed.

7. Respondent has a meritorious defense to all allegations, especially those involving tariff violations. No tariff violations occurred as proven by the charge card slips for the trips at issue. The BIE combined the driver's tips with the metered fare to allege that there were tariff violations.

8. Respondent filed its Answer and New Matter in a reasonable period of time especially in light of the investigation required and the constraints of the Holiday Season.

9. There is neither an actual or presumptive prejudice to the BIE as a result of the alleged 11-day late filing. No hearing date has yet been set; no discovery served; and no harm is brought upon either party.

10. The BIE has already filed its Reply to New Matter.

11. To the extent necessary, the Respondent avers that it needed the extra time, during the Holiday Season, to obtain records related to the allegations which were in storage and otherwise took several days to obtain and analyze. For those reasons the Respondent alternatively requests that its Answer and New Matter be filed *nunc pro tunc*.

WHEREFORE, Respondent, The Yellow Cab Company of Pittsburgh, requests that the Bureau's Motion to Strike be denied and/or, alternatively, that its Answer and New Matter be filed *nunc pro tunc*.

Respectfully submitted,

Yellow Cab Company of Pittsburgh

Date: January 13, 2012

By: /s/ Ray F. Middleman

Ray F. Middleman, Esquire  
Attorneys for Respondent

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**VERIFICATION**

I, RAY F. MIDDLEMAN, ESQUIRE, state that I am the counsel for the Respondent and that as such being authorized to do so, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

By \_\_\_\_\_  
Ray F. Middleman, Esquire  
Attorney for Defendant Yellow Cab  
Company of Pittsburgh

Date: January 13, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 13<sup>th</sup> day of January 2012, served a copy of the above Response to Motion to Strike Answer and New Matter; In the Alternative, Motion for Leave to File Answer and New Matter *Nunc Pro Tunc* upon counsel of record by first class, United States Mail, postage pre-paid, addressed as follows:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Michael E. Hoffman, Manager  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Wayne T. Scott, Prosecutor  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

/s/ Ray F. Middleman  
Ray F. Middleman, Esquire

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	:
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**ORDER**

AND NOW, to wit, this \_\_\_\_\_ day of January 2012, it is hereby ORDERED, ADJUDGE and DECREED that the Motion to Strike filed by the Bureau of Investigation and Enforcement be DENIED and that the Answer and New Matter filed by Respondent Yellow Cab Company of Pittsburgh be permitted *nunc pro tunc*.

By the Court:

\_\_\_\_\_ J.