



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

February 10, 2012

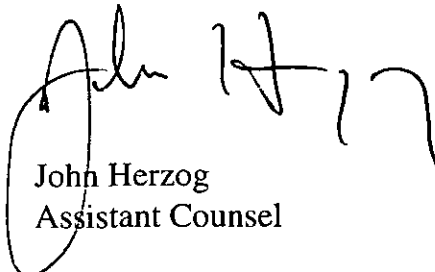
Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re:** Pennsylvania Public Utility Commission Bureau of Transportation and  
Safety V. Okey Cab Company; C-2010-2132453

Dear Secretary Chiavetta:

Enclosed for filing are the original and nine copies of the Bureau of  
Transportation and Safety's Exceptions in the above matter. With a copy of this letter, I  
am sending copies of the enclosed to those persons on the Certificate of Service.

Very truly yours,



John Herzog  
Assistant Counsel

Enclosures

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
<b>Bureau of Transportation and Safety</b>	:	
	:	
v.	:	<b>C-2010-2132453</b>
	:	
<b>Okey Cab Company</b>	:	

**EXCEPTIONS OF THE  
BUREAU OF TRANSPORTATION AND SAFETY**

John Herzog  
Assistant Counsel, Law Bureau, on behalf of  
the Bureau of Transportation and Safety of the  
Pennsylvania Public Utility Commission

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000

Dated: February 10, 2012

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The Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission (“Bureau”)<sup>1</sup>, through its Assistant Counsel, John Herzog, files the following Exceptions to the Initial Decision of Administrative Law Judge Ky Van Nguyen (“ALJ”), and states as follows:

**Exception 1. The ALJ Erred In Concluding That Respondent’s Failure To File A Tariff Did Not Violate The Commission’s Regulations.**

This case involves Respondent’s admitted failure to file a tariff. It is undisputed that Respondent holds authority to provide taxicab service from the Commission. It is undisputed that Respondent never filed a tariff in conjunction with its certificate.

Pursuant to 66 Pa. C.S. §1302, Respondent is required to file a tariff showing its rates. Commission regulations also require Respondent to file a tariff. 52 Pa. Code §23.11.<sup>2</sup> Respondent was notified by the Commission of the necessity to file a tariff, yet failed to do so.

The ALJ based his decision on the notion that the Commission regulations require Respondent to offer or furnish service prior to the tariff filing requirement kicking in.

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<sup>1</sup> Following a Commission reorganization, the Bureau’s prosecutorial duties are now performed by the Bureau of Investigations and Enforcement.

<sup>2</sup> Section 23.11 provides:  
Filing of rates.

(a) Before any carrier furnishes or offers to furnish any service, it shall file with the Commission tariffs showing the rates or other compensation demanded for such service, including COD services, and all rules governing the furnishing of the service or the application of the rates demanded therefor, if the filing of a tariff with the Commission is not construed as an approval by it of the rates or rules contained therein, or as a waiver of any other requirement of 66 Pa.C.S. § § 101—3315.

(b) The tariffs of carriers also subject to the jurisdiction of a Federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by such Federal agency.

Respondent, by its owner/president, admitted that it never provided service. However, the ALJ struck this testimony, since Respondent, a corporation, was not represented by counsel at hearing. Instead, the ALJ required the Bureau to prove that Respondent was operating, which the Bureau did not.

First, the ALJ was wrong in concluding that a tariff is only required to be filed if a utility decides, at its leisure, to provide service. While an overly restrictive reading of §23.11 may indicate this result, the admonition contained in §23.11 is an instruction to a utility that it cannot provide service until it files a tariff. That admonition does not relieve a utility from filing a tariff *ad infinitum*. Such a reading of §23.11 is strained and inconsistent with the intent and spirit of the regulation.

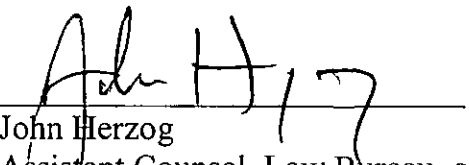
Additionally, even if the ALJ's interpretation of §23.11 is correct, it is not incumbent upon the Bureau to prove that Respondent actually provided service. That burden would properly be placed on Respondent after it was established that there was never a filed tariff, as here. Pursuant to 66 Pa.C.S. §315(b), the burden of proof is placed on the utility to establish that it is in compliance with the Commission's regulations. Here, the only way to establish "compliance" within the ALJ's interpretation of §23.11, is to establish that the Respondent never provided service. Respondent failed to meet this burden, since the ALJ struck its testimony. While the Bureau's witness never observed Respondent operating, this is not dispositive of whether Respondent ever did, in fact, operate. It was not the Bureau's obligation to prove that Respondent actually provided service.

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Pursuant to 52 Pa. Code §29.61, Respondent is required to provide service upon receiving its certificate. Pursuant to 52 Pa. Code §29.62, Respondent is required to advise the Commission of any service interruptions lasting more than 48 hours. Respondent never notified the Commission of a service lapse. N.T. 17. The Bureau submits that even adopting the ALJ's reading of §23.11, Respondent failed to meet its burden to establish that it never provided service.

WHEREFORE, for the foregoing reasons, the Bureau of Transportation and Safety of the Pennsylvania Public Utility Commission requests that the Commission GRANT its Exceptions and sustain the complaint.

Respectfully submitted,

  
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John Herzog  
Assistant Counsel, Law Bureau, on behalf of  
the Bureau of Transportation and Safety of the  
Pennsylvania Public Utility Commission

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Harrisburg PA 17105-3265  
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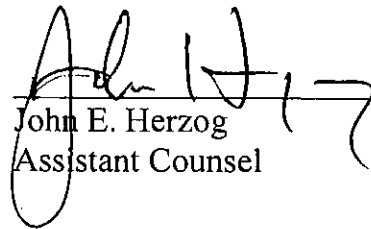
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**CERTIFICATE OF SERVICE**

I hereby certify that I am this 10th day of February, 2012, serving the foregoing documents upon the persons listed below in accordance with the requirements of 52 Pa. Code §1.54:

Ky Van Nguyen, Administrative Law Judge  
Suite 4063  
801 Market St.  
Philadelphia, PA 19107

Okey Cab Company  
6510 Upland St.  
Philadelphia, PA 19142

  
John E. Herzog  
Assistant Counsel

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