



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

IN REPLY PLEASE
REFER TO OUR FILE

June 28, 2012

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

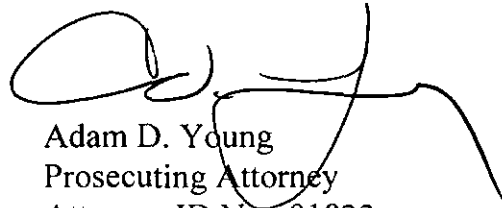
2012 JUN 28 PM 2:52
RECEIVED
PA PUC
SECRETARY'S BUREAU

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. The Yellow Cab Company of Pittsburgh,
Docket No. C-2012- 2219127

Dear Ms. Chiavetta:

Enclosed for filing are an original and three (3) copies of the Reply to New Matter on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,



Adam D. Young
Prosecuting Attorney
Attorney ID No. 91822

Counsel for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2012 JUN 28 PM 2:52
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement :
: **Docket No. C-2012-2219127**
v. :
:
The Yellow Cab Company of Pittsburgh :

**REPLY TO THE NEW MATTER OF THE YELLOW CAB COMPANY OF
PITTSBURGH**

AND NOW comes the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") and files this Reply to the New Matter of the Yellow Cab Company of Pittsburgh ("Yellow Cab" or "Respondent"), pursuant to 52 Pa. Code § 5.63. In support thereof, I&E avers as follows:

9. Denied. The civil penalties set forth in I&E's complaint are based on each violation that Motor Carrier Enforcement Officer Gary Double, Jr. discovered throughout the course of investigating this customer complaint. Each proposed civil penalty is in direct relationship to the violation alleged, and in accordance with approved penalty guidelines. Further, Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, permits the Commission to seek up to \$1,000 per violation for each day the violation occurs. The civil penalties requested in the complaint are each under the \$1,000 statutory maximum per violation and, as such, are not unnecessarily punitive and excessive.

10. Denied. It is denied that I&E has an affirmative duty to provide Respondent with notice and an opportunity for counsel to be present prior to entering Respondent's facilities to conduct an investigation. By way of further answer, the General Assembly gave the Commission, through its authorized representatives, the "full power and authority" to enter the premises of a public utility and perform the following:

make any inspection, valuation, physical examination, inquiry, or investigation of any and all plant and equipment, facilities, property and pertinent records, books papers, accounts, maps, inventories, appraisals, valuations, memoranda, documents, or effects whatsoever, of any public utility

66 Pa. C.S. § 506. It is also denied that Respondent's due process rights were violated. Respondent is receiving due process by virtue of the instant proceeding.

11. Denied. It is denied that I&E had an obligation to advise Respondent's employees and its lease drivers of "rights with respect to the interviews/investigation being conducted." It is also denied that such a warning or advisement is required when the Commission or its authorized representatives investigate potential regulatory violations that, if substantiated, would result in a non-criminal, administrative proceeding. It is denied that any information obtained from these interviews should be stricken. By way of further answer, Respondent has an obligation to furnish the Commission with information during the course of an investigation, pursuant to Section 505 of the Public Utility Code, 66 Pa. C.S. § 505.

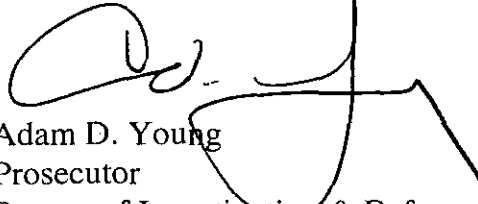
12. Denied. John Oliverio is Respondent's employee on duty at the time Enforcement Officer Gary Double Jr. arrived to conduct his investigation into the Formal Complaint filed by Mr. Clayton Davis. Mr. Oliverio gave no indication that there was anyone superior to him in charge of operations at that time who is authorized to answer EO Double's questions. If Respondent is leaving unqualified employees in charge of its operations, who are not familiar enough with Respondent's operations and procedures so as to accurately answer questions about them, then a further investigation should be conducted into Respondent's training, qualification, oversight, and management practices and procedures.

13. Denied. It is denied that the reference to illegal activity connotes criminal activity, as opposed to regulatory violations. It is denied that I&E is seeking criminal fines and not civil penalties. For the reasons described in Reply No. 10, it is denied that I&E must notify Respondent of its intention to interview Respondent's employees and lease drivers, or that I&E must advise Respondent's employees and lease drivers of their right not to consent to being interviewed without consulting with Respondent. It is also denied that I&E must advise Respondent's employees and lease drivers of a right to counsel prior to conducting interviews. By way of further response, such interviews were not custodial interrogations and the statements obtained therein would not result in or be the subject of criminal prosecutions. To the contrary, the instant proceeding is an administrative one and Respondent, its employees and lease drivers were never placed in police custody. Consequently, I&E is not required to advise Respondent of rights akin to a Miranda warning prior to interviewing Respondent, its employees and its lease drivers.

14. Denied as stated. By way of further answer, Respondent attempts to evade responsibility for its lack of direct control and supervision of its operations by labeling its drivers as independent contractors, and stating that, as such, Respondent can't force drivers to take calls. Complainant in this case waited 3.5 hours for a cab to pick him up.

Leaving customers "at the mercy" of the drivers does not constitute direct control or supervision, and amounts to inadequate and unreasonable service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adam D. Young". The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Adam D. Young
Prosecutor
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265

Date: June 28, 2012

VERIFICATION

I, Michael E. Hoffman, Manager, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date:



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

(717) 783-5010

RECEIVED
2012 JUN 28 PM 2:52
PA. PUC
SECRETARY'S BUREAU

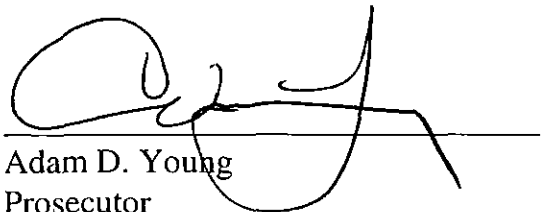
CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, Reply to New Matter, upon the persons listed and in the manner indicated below:

Service by First Class Mail:

Ray F. Middleman, Esq.
Malone Middleman P.C.
Northridge Office Plaza
117 VIP Drive, Suite 310
Wexford, PA 15090

RECEIVED
2012 JUN 28 PM 2:52
PA PUC
SECRETARY'S BUREAU



Adam D. Young
Prosecutor
Attorney ID No. 91822
Pennsylvania Public Utility Commission

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

Dated: June 28, 2012