

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION :
BUREAU OF TRANSPORTATION AND SAFETY :
v. : Docket No. C-2012-2219127
YELLOW CAB COMPANY OF PITTSBURGH, :

MOTION TO STRIKE THE UNTIMELY REPLY TO NEW MATTER OF PUC

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

Procedural History

1. On January 9, 2012 The Pennsylvania Public Utility Commission, Bureau of Transportation and Safety (hereinafter “PUC”) filed a Complaint against YCC alleging violations at 66 Pa.C.S. §1501, 52 Pa.Code §29.101(f)(2) and 52 Pa.Code §29.313(c)(4).
2. On January 20, 2012 YCC timely filed its Answer and New Matter denying the allegations of the PUC and raising several meritorious defenses.
3. On June 28, 2012 the PUC filed its Reply to New Matter, six (6) months and eight (8) days after YCC timely filed its Answer and New Matter.
4. Pursuant to §5.63(a) of the Commission’s Regulations, Replies to New Matter shall be filed with the Commission and served within twenty (20) days after the date of service of the Answer. 52 Pa.Code §5.63(a).
5. Section 5.63(b) of the Commission’s Regulations, provides as follows: “The failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted”. 52 Pa.Code §5.63(b).

6. The PUC's Reply to New Matter was due on or before February 9, 2012.

Therefore, the PUC's Reply to New Matter was not timely filed and, therefore, must be stricken and deemed to be in default.

7. The PUC did not request an extension of time within which to file its Reply to New Matter.

8. The PUC has not provided any reason or justification for its failure to file a timely Reply to New Matter.

9. Due to the lengthy delay between YCC's Answer and New Matter and the PUC's Reply to New Matter, YCC has been denied the ability to obtain a just, speedy and inexpensive determination of this matter.

10. Given these circumstances, YCC respectfully requests that the PUC's untimely Reply to New Matter be stricken, that the PUC's New Matter be deemed in default and that the defenses set forth in YCC's New Matter be deemed admitted.

Respectfully submitted,

MALONE MIDDLEMAN, P.C.

Date: August 7, 2012

By: /s/ Ray F. Middleman

Ray F. Middleman, Esquire
Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of August 2012, served a copy of the above Motion to Strike the Untimely Reply to New Matter 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
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/s/ Ray F. Middleman
Ray F. Middleman, Esquire

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YELLOW CAB COMPANY OF PITTSBURGH,	:

ORDER

AND NOW, to wit, this _____ day of _____, 2012, it is hereby ORDERED that the Yellow Cab Company of Pittsburgh's Motion to Strike the Untimely Reply to New Matter is GRANTED and that the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety's Reply to New Matter is hereby stricken.

It is further ADJUDGED that the allegations and defenses contained in the Yellow Cab Company's New Matter are deemed admitted.

J.