

**Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Docket Number C-2012-2219127

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

The Yellow Cab Company of Pittsburgh

Transportation Complaint

**MAIN BRIEF OF RESPONDENT
THE YELLOW CAB COMPANY OF PITTSBURGH**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	i
I. STATEMENT OF THE CASE.....	1
II. PROPOSED FINDINGS OF FACT	2
III. SUMMARY OF ARGUMENT	6
IV. ARGUMENT	8
A. The <u>Rosi</u> Factors Support Mitigation of Penalties for the Violation of 66 Pa.C.S. § 1501.....	8
B. Yellow Cab Has Not Violated 52 Pa. Code § 29.313 With Respect to Its Manifests	11
V. CONCLUSION.....	14
VI. PROPOSED ORDERING PARAGRAPHS.....	15

TABLE OF AUTHORITIES

Cases and Commission Opinions **Page(s)**

Rosi v. Bell Atlantic-Pa., Inc., Docket No.
C-00992409 (February 10, 2000)8

Statutes and Regulations

52 Pa. Code § 69.12016, 11

52 Pa.Code. § 29.3136-7, 8, 11-13, 14

66 Pa.C.S. § 15018, 14

I. STATEMENT OF THE CASE

The Pennsylvania Public Utility Commission (“PUC”) Bureau of Investigation and Enforcement (“BIE”) filed a complaint against Yellow Cab Company of Pittsburgh (“Yellow Cab”) at the above-captioned docket number. The complaint contained three claims: a manifest/log violation, an Unreasonable Service Complaint, and a Control Complaint. A hearing was held on December 6, 2012 at 10:00 a.m. before Administrative Law Judge Katrina L. Dunderdale at the PUC’s hearing room in the Piatt Place Building in Pittsburgh, Pennsylvania (the “December 6th Hearing”).

At the December 6th Hearing, the BIE agreed to drop the Control Complaint from the action. Transcript of December 6, 2012 Hearing (“Hearing Transcript” or “HT”) at 8-10. With respect to the Unreasonable Service Complaint, Yellow Cab agreed with the facts as set forth, such that the only issue outstanding with respect to that claim is the appropriate amount of the corresponding penalty. HT at 7-11. Finally, with respect to the manifest/log violation, the BIE and Yellow Cab agreed that the subject electronic manifests of Yellow Cab contain all information required by the PUC pursuant to PUC’s approval of such forms in 2008. HT at 36. The only outstanding issue remaining with respect to the manifest/log violation issue is whether the delay in providing the manifest to the Enforcement Officer is a sufficient basis to impose a penalty. *Id.*

II. PROPOSED FINDINGS OF FACT

1. Complainant is the Bureau of Investigation and Enforcement for the Pennsylvania Public Utility Commission. Complaint, generally.

2. Respondent is Yellow Cab Company of Pittsburgh, which maintains its principal place of business at 1825 Liverpool Street, Pittsburgh, Pennsylvania 15233. Complaint at ¶ 1.

3. Respondent holds a certificate of public convenience from the Public Utility Commission at Docket No. A-00049926 for call or demand authority. Complaint at ¶ 2.

4. Clayton Henry Davis, Sr. is an adult individual residing at 515 Friendship Avenue, McKees Rocks, Pennsylvania 15136. HT at 16.

5. On January 4, 2011, Mr. Davis called Yellow Cab for a call or demand service pickup. HT at 16.

6. Mr. Davis was told a cab would pick him up in approximately thirty (30) minutes. HT at 16-17.

7. A cab did not pick Mr. Davis up in this timeframe. HT at 17.

8. Mr. Davis called Yellow Cab back, and a cab had not yet been dispatched. *Id.*

9. After several return calls from Mr. Davis, a Yellow Cab vehicle picked Mr. Davis up and transported him and another passenger to their desired location. *Id.*

10. Mr. Davis's initial call for call or demand service was at approximately 1:20 p.m. HT at 18.

11. Mr. Davis and another passenger were picked up by a Yellow Cab vehicle at approximately 3:45 p.m. *Id.*

12. Therefore, Mr. Davis waited a total of approximately 2 and one-half (2 ½) hours for a cab, which wait was two (2) hours longer than he was initially told. *Id.*

13. Mr. Davis did not complain about the service he received after being picked up by the Yellow Cab vehicle. HT at 29.

14. Yellow Cab does not dispute the testimony regarding the events with respect to Mr. Davis on January 4, 2011, nor does it dispute a violation for unreasonable service. HT 7-11.

15. Gerry Campolongo is the Director of Yellow Cab. HT at 20.

16. Mr. Campolongo apologized on the record for the incident involving Mr. Davis, to Mr. Davis in person at the December 6th Hearing. HT at 21.

17. The delay in providing service to Mr. Davis was caused by a deficiency in the computer system, and was not the result of intentional or willful conduct. HT at 21-23, 46-48.

18. As a result of the incident described herein, Yellow Cab immediately took corrective measures to ensure that such a situation does not happen again. HT at 21, 38, 48-54, 56-57.

19. One of the measures was to hire an employee to oversee the electronic dispatch system, with specific experience in ensuring that dispatching systems operate efficiently and as intended. HT at 21, 40-41.

20. Yellow Cab hired George Francis Delk II to fill this role in 2011, with the title of Manager of Communications and Quality Control. HT at 21, 40-42.

21. As a result of Mr. Delk's work, the dispatching system has improved to avoid situations such as what happened to Mr. Davis. HT at 22-23.

22. Gary Lee Double, Jr. was the Enforcement Officer from the PUC to investigate this incident. HT at 24-25.

23. Mr. Double determined that Terry Harrison was the driver who provided service to Mr. Davis. HT at 25.

24. Mr. Double requested the manifest log for the day and driver that transported Mr. Davis from Yellow Cab on February 11, 2011. HT 25-26.

25. Yellow Cab provided Mr. Double with a hand written Yellow Cab trip sheet for the driver, which document was marked as BIE Exhibit 1 at the December 6 Hearing. HT at 27.

26. The document marked as BIE Exhibit 1 was a form filled in by hand. HT at 27, BIE Exhibit 1.

27. The PUC had given Yellow Cab permission to use electronic manifests prior to the subject incident involving Mr. Davis. HT at 29.

28. The PUC has stipulated that Yellow Cab was approved to use electronic manifests in 2008. HT at 32-34.

29. The PUC was aware that Yellow Cab was approved to use electronic manifests. Id.

30. The PUC did not interview the driver who provided service to Mr. Davis. Id.

31. There is nothing in the record to indicate that the PUC specifically requested the electronic manifests.

32. There is nothing of record to indicate that the PUC followed-up to inquire as to the absence of production of the electronic manifests. Id.

33. The electronic manifest for Mr. Harrison's vehicle for the date of the incident was marked as Yellow Cab Exhibit B at the December 6 Hearing. HT at 35, 37.

34. The PUC has stipulated that the electronic manifest provided by Yellow Cab meets all statutory requirements as to the information contained therein. HT at 35-36.

35. The only deficiency with respect to the electronic manifest claimed by the PUC is that it was produced to the PUC in 2012, instead of at the time of Mr. Double's investigation in February 2011. HT at 36.

36. The electronic manifests were not provided to Mr. Double during his investigation visit in February because of technical difficulties with accessing the system. HT at 38.

37. As soon as the technical difficulties were addressed and Yellow Cab was aware that Mr. Double had not received copies of the electronic manifests, Yellow Cab produced them to the PUC. HT at 38-39.

38. The proper information was stored in Yellow Cab's system on the electronic manifests since the incident on January 4, 2011. HT at 44-45.

39. Due to a lack of familiarity with the system, Mr. Delk's predecessor was unable to access this information to provide to Mr. Double in February 2011. HT at 44-45, 55.

40. Mr. Delk took actions in setting up the dispatching system to improve service. HT at 48-54, 56-57.

41. Yellow Cab has taken action to avoid any future occurrences similar to that which happened to Mr. Davis. HT at 58.

III. SUMMARY OF THE ARGUMENT

Only two issues remain regarding the incident of January 4, 2011 involving the service to Mr. Davis: (1) the appropriate amount of penalties which should be imposed on Yellow Cab relating to the unreasonable service complaint; and (2) whether Yellow Cab violated 52 Pa. Code § 29.313 by producing copies of the electronic manifest to the PUC after the date of Mr. Double's visit to Yellow Cab.

1. Rosi Factors With Respect to the Unreasonable Service Complaint

As to the first issue, the Rosi factors – as codified at 52 Pa. Code § 69.1201(c) – all strongly support mitigating the amount of the penalty imposed for the unreasonable service complaint. In short, the incident involving Mr. Davis was a single-time occurrence which was caused by technical deficiencies in the dispatching system resulting in a two hour delay. Yellow Cab has already corrected the deficiencies. There has been no showing of wanton or willful action on the part of Yellow Cab for the delay in pickup, no personal injury or property damage resulting from the delay, and a substantial effort to ensure that such a situation does not arise again, all of which are factors in support of mitigation as outlined below.

2. Production of Manifests Under 52 Pa. Code § 29.313

With respect to the manifests, Yellow Cab was not in violation of the governing regulations. The PUC did not meet the regulatory requirements to require the production of such manifests by failing to present Yellow Cab with the receipt required under the regulation. The PUC has stipulated that all required information is contained on the electronic manifest. Yellow Cab immediately provided the information that was accessible to it when requested by the PUC; and further immediately provided the PUC with the electronic manifests as soon as Yellow Cab was able to do so and realized that the PUC did not yet have that information. In short, all of the

information required is being – and has been – maintained by Yellow Cab, and a technical oversight led to the delay in providing the electronic manifests to the PUC. The PUC received all relevant manifests, and were provided all required information, even though the PUC did not fulfill its obligations in requesting the manifests by failing to present the receipt required under 52 Pa. Code § 29.313.

IV. ARGUMENT

As previously stated, only two discrete issues remain regarding the incident of January 4, 2011 involving the call or demand service to Mr. Davis: (1) the appropriate amount of penalties which should be imposed on Yellow Cab relating to the unreasonable service complaint; and (2) whether Yellow Cab violated 52 Pa. Code § 29.313 by producing copies of the electronic manifest to the PUC after the date of Mr. Double's visit to Yellow Cab. As to the mitigation (first) issue, the Rosi factors weigh heavily in favor of a substantial mitigation of the civil penalties in connection with the unreasonable services complaint. With respect to the manifest (second) issue, the unintentional delay in production of properly maintained records does not form the basis of a violation of 52 Pa. Code § 29.313, and therefore the complaint with respect to this claim should be denied.

A. **The Rosi Factors Support Mitigation of Penalties for Violation of 66 Pa.C.S. § 1501**

As previously stated herein, Yellow Cab does not dispute the testimony regarding the events with respect to Mr. Davis on January 4, 2011, nor does it dispute a that such conduct constitutes a violation of 66 Pa.C.S. § 1501 for unreasonable service. HT 7-11. The sole issue with respect to the unreasonable service complaint is the amount of civil penalties to be imposed on Yellow Cab for the violation. Id.

Yellow Cab acknowledges that the PUC may impose a maximum civil penalty of \$1,000 for every violation. 66 Pa. C.S. §3301. However, the ALJ is bound to follow the penalty guidelines as set forth in Rosi v. Bell Atlantic-Pa., Inc., Docket No. C-00992409 (February 10, 2000) and as codified at 52 Pa. Code §69.120(c). The factors to be taken into account in determining a civil penalty are set forth in 52 Pa. Code § 69.1201(c) as follows:

- (c) The factors and standards that will be considered by the Commission include the following:
- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
 - (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
 - (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
 - (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
 - (5) The number of customers affected and the duration of the violation.
 - (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
 - (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
 - (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
 - (9) Past Commission decisions in similar situations.
 - (10) Other relevant factors.

A review of these factors with respect to the incident involving Mr. Davis leads to the conclusion that any civil penalty imposed should be lessened from the requested amount. With respect to the Rosi factors:

1. The conduct at issue here did not involve willful fraud or misrepresentation, but rather came about because of technical errors/system deficiencies. HT at 21-23, 46-48. The conduct here was simply not of a serious nature.
2. There was no personal injury or property damage resulting from the incident. Mr. Davis suffered an approximate two (2) hour delay due to the deficiency, but there are no facts of record indicating any other injury or damages. HT at 18. There were therefore no consequences of a serious nature resulting from the incident.
3. There are no facts of record indicating that the conduct at issue was intentional, but was rather due to technical errors/system deficiencies. HT at 21-23, 46-48.
4. Yellow Cab took significant steps to correct the deficiencies in the system, and hired an expert to oversee the system to best utilize it and ensure that such oversights are avoided in the future. HT at 21-23, 38, 40-42, 48-54, 56-57. Gerry Campolongo, the Director of Yellow Cab, was personally involved in the proceedings. HT at 20-23.
5. Mr. Davis and his accompanying passenger were the only customers affected by the violation, and the violation lasted, at most, two hours. HT at 17-18.
6. There is no evidence of record to indicate that Yellow Cab has had frequent or recurrent violations, or that such violations and/or complaints occur at a higher than expected rate.
7. The record shows that Yellow Cab cooperated with the PUC's investigation. Upon request, Yellow Cab turned over the handwritten manifests, though those records turned out to be incomplete. HT at 27. Once Yellow Cab had access to the electronically stored information, it provided such information to the PUC. HT at 38-39. The record does not contain any facts to support a finding that Yellow Cab impeded or did not cooperate in the PUC's investigation.
8. No civil penalties are required to deter future similar conduct, as Yellow Cab has taken measures to ensure the avoidance of future violations. HT at 21-23, 38, 40-42, 48-54, 56-57.

9. No past Commission decision appears to address a situation similar in facts to those before the Commission here.

Each of these factors support a mitigation of the penalties requested by the PUC. As to other factors, Yellow Cab's Director apologized directly to the customer, on the record at the December 6 Hearing. HT at 21. Yellow Cab did not dispute that the service provided to Mr. Davis was not reasonable, but instead acknowledged that it had made an error. HT at 7-11. Yellow Cab not only took measures to prevent similar problems from occurring in the future, but hired a Manager of Communications and Quality Control to oversee operations to avoid such future incidents as well. HT at 21-23, 38, 40-42, 48-54, 56-57. Finally, Mr. Davis did not complain about the conduct of the driver in any way. HT at 29.

As illustrated above, the Rosi factors, as codified at 52 Pa. Code § 69.1201, all support a mitigation of the penalties requested by the PUC with respect to the unreasonable service complaint. The problem was a one-time occurrence, involving two passengers, that resulted in a two hour delay. No property damage or bodily injury was incurred as a result, and Yellow Cab has taken steps to avoid a repeat of this situation. Therefore, Yellow Cab respectfully submits that the penalty for the unreasonable service complaint be substantially reduced from that which PUC seeks.

B. Yellow Cab Has Not Violated 52 Pa. Code § 29.313 With Respect to Its Manifests

The PUC has stipulated that the electronic manifest provided to it by Yellow Cab meets all statutory requirements with respect to the information contained therein. HT at 35-36. The only deficiency with respect to the electronic manifest claimed by the PUC is that Yellow Cab did not immediately produce the log when requested by Mr. Double. HT at 36. The relevant

provision of the Pennsylvania Code states as follows: “Log sheets may be retained in electronic format. Log sheets, or comparable printouts from an electronic storage device, shall be turned over **upon request to an authorized representative of the Commission upon the rendering of a receipt.**” 52 Pa. Code 29.313(c) (emphasis added). Again, the PUC stipulates that all the information required under the subparagraphs of § 29.313(c) is contained on the electronic manifest printouts. HT 35-36. The PUC apparently claims that the electronic manifests were not turned over to the Commission in accordance with the emphasized language above. The record does show that certain handwritten logs were turned over to Mr. Double upon his request. HT at 27 and BIE Exhibit 1. The electronic manifests were turned over at a later date, once they were accessible to Yellow Cab. HT at 38-39. However, nothing in the record indicates that Mr. Double, or the PUC, ever “render[ed] a receipt” to Yellow Cab for the manifests. Under the plain language of § 29.313(c), records “shall be turned over to...the Commission **upon the rendering of a receipt.**” *Id.* (emphasis added). The PUC cannot claim a violation of § 29.313 on the basis that that the records were not turned over immediately upon Mr. Double’s request, as the record lacks any support that he rendered a receipt to Yellow Cab to trigger the obligation. As such, there can be no violation of § 29.313 based on the current record.

Furthermore, there is nothing in the record to support any finding that the delay in producing the electronic manifest in any way hampered the PUC’s investigation or was prejudicial to the PUC. There is also nothing in the record to indicate that the delayed production of the electronic manifests was purposeful or intended to impede the PUC’s investigation. In fact, the record indicates that the delay in the production of the electronic manifests was due to technical limitations and that Yellow Cab provided the records as soon as it: (a) was able to access the records; and (b) realized the records had not been provided to the

PUC previously due to those technical limitations. HT 38-39. Moreover, the PUC approved Yellow Cab to use the electronic manifests in 2008, and was aware that Yellow Cab did, in fact, utilize them. HT at 32-34. Despite that, upon production of the handwritten logs in February 2011, the PUC did not interview the driver of the subject vehicle, and there is no evidence that the PUC followed-up to ensure that such electronic manifests were not available or in existence. HT at 32-34.

There is no question that the electronic manifests contain all of the information required by statute. HT 35-36. There is also no question that these manifests were provided to the PUC, and that they contained all required information at all times. HT 38-39, 44-45. If the PUC is to argue that the records were not turned over “upon request,” then such argument must fail, as there is no indication in the record that the PUC was compliant with “rendering a receipt.” Therefore, no violation of § 29.313 can be shown on the current record, and such claim should be denied.

V. CONCLUSION

For the foregoing reasons of fact and law, Yellow Cab respectfully requests this Honorable Court finds that 1) the requested penalty with respect to the unreasonable service complaint under 66 Pa.C.S. § 1501 be mitigated under the Rosi factors; and 2) Yellow Cab did not violate 52 Pa. Code § 29.313.

Respectfully submitted,

MALONE MIDDLEMAN, P.C.

A handwritten signature in blue ink, appearing to be 'R. F. Middleman', is written over a horizontal line.

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David E. Smith, Esquire
Attorneys for Respondent,
Yellow Cab Company of Pittsburgh

VI. PROPOSED ORDERING PARAGRAPHS

1. That the complaint of the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement against the Yellow Cab Company of Pittsburgh at Docket No. C-2012-2219127 is hereby granted in part and denied in part. The complaint is hereby granted to the extent it charges a violation of the Public Utility Code, 66 Pa.C.S. § 1501. In all other respects, the complaint is hereby denied.

2. That Respondent, Yellow Cab Company of Pittsburgh, is hereby directed to pay a civil penalty of _____ dollars (\$_____), pursuant to sections 3301 and 3315 of the Public Utility Code, 66 Pa.C.S. §§ 3301 and 3315, by sending a certified check or money order within thirty (30) days of entry of the Commission’s Order in this case to:

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

3. The Respondent is hereby directed to cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and the regulations of this Commission, 52 Pa. Code §§ 1.1 *et seq.*

Date: _____

Katrina L. Dunderdale,
Administrative Law Judge

PROOF OF SERVICE

I hereby certify that I have this 24th day of January 2013, served a copy of the above Main Brief of Respondent upon the Honorable Katrina L. Dunderdale and counsel of record as follows:

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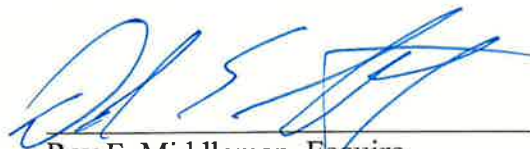
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Respectfully submitted,

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