



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

IN REPLY PLEASE
REFER TO OUR FILE

January 25, 2013

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

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

Dear Secretary Chiavetta:

Enclosed for filing is Complainant Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement's Main Brief in the above captioned matter.

Sincerely,

A handwritten signature in cursive script that reads "Heidi L. Wushinske".

Heidi L. Wushinske
Prosecutor
Attorney ID No. 93792

Enclosure

cc: As per Certificate of Service

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**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

**COMPLAINANT PENNSYLVANIA PUBLIC
UTILITY COMMISSION'S BRIEF**

Heidi L. Wushinske
Prosecutor

Wayne T. Scott
First Deputy Chief Prosecutor

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

Dated: January 25, 2013

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STATEMENT OF THE CASE

Pursuant to its enforcement responsibilities, the Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E) issued a complaint (C-2012-2219127) against the Yellow Cab Company of Pittsburgh (Yellow Cab) for violations arising from a customer complaint. Specifically, on January 4, 2001 at approximately 1:20 p.m., Clayton Davis contacted Yellow Cab requesting transportation. During the next three and a half hours, Mr. Davis contacted Yellow Cab several times and was advised that a car would be arriving at any time. Mr. Davis was finally picked up at around 5:00 p.m.

Mr. Davis subsequently called Yellow Cab, speaking with its operators three times. During the third call, Mr. Davis asked to speak with a supervisor and was transferred to voicemail. Three days later, someone returned his call and offered to send him a \$15 voucher.

Commission Enforcement Officer Gary Double, Jr. subsequently investigated Mr. Davis' complaint. On February 11, 2011, Julie Armstrong, a Yellow Cab employee, provided Officer Double with a log sheet for January 4, 2011, for Terry Harrison, the driver of Cab No. 221 who ultimately picked up Respondent. Officer Double found that the following items were missing from the log sheet: the end time for the shift, the times and places of origin and destination of each trip including the odometer or meter mileage *at the origin and destination of each passenger trip, the street name and address or identifiable landmark of the origin and destination places, correct meter readings for the*

beginning and end of the shift, and the driver's signature attesting to the accuracy of the data recorded.

As a result of Mr. Davis' complaint and Officer Double's investigation, I&E issued a complaint against Yellow Cab, alleging violations of 66 Pa.C.S. § 1501, 52 Pa. Code § 29.101(f)(2)(i), and 52 Pa. Code § 29.313(c)(4). I&E proposed civil penalties of \$500, \$500, and \$50 respectively, for a total of \$1,050.00.

Yellow Cab filed a timely answer and new matter in which it denied the allegations set forth in the complaint and presented several legal arguments, including excessive and punitive fines, due process violations, and lack of authority of Yellow Cab employees to discuss its operations or procedures.

I&E filed a nunc pro tunc reply to Yellow Cab's new matter in which it denied all of the new matter alleged by Yellow Cab.

The Honorable Katrina L. Dunderdale held a hearing on this matter on December 6, 2012, at which both parties appeared. I&E presented the testimony of two witnesses, Officer Double and Mr. Davis. Yellow Cab presented the testimony of Gerry Campolongo and George Frances Delk, II. Pursuant to Judge Dunderdale's briefing order, dated January 4, 2013, I &E submits this brief in support of the relief sought in the complaint.

PROPOSED FINDINGS OF FACT

1. On January 4, 2011 at approximately 1:20 p.m., Clayton Davis contacted Yellow Cab requesting transportation. (N.T. 16-18).
2. During the next three and a half hours, Mr. Davis contacted Yellow Cab several times and was advised that a car would be arriving at any time. (N.T. 16-18).
3. Mr. Davis was finally picked up at around 5:00 p.m. (N.T. 19).
4. On February 11, 2011, PUC Enforcement Officer Gary Double received a manifest trip sheet from Julie Armstrong. (N.T. 25-26, BIE Ex. 1)).
5. The log sheet was missing the following: the end time for the shift, the times and places of origin and destination of each trip including the odometer or meter mileage at the origin and destination of each passenger trip, the street name and address or identifiable landmark of the origin and destination places, correct meter readings for the beginning and end of the shift, and the driver's signature attesting to the accuracy of the data recorded. (BIE Ex. 1)
6. Officer Double was provided with no other type of manifest trip or log sheet. (N.T. 28).
7. At the time of Officer Double's investigation, Yellow Cab had no way of accessing its electronic manifests, so Officer Double was given an old manual sheet. (N.T. 55).

ARGUMENT

Prior to the hearing, the parties stipulated as to the portions of the complaint alleging improper service and failure to be in direct control and supervision of its operating authority. Therefore, the remaining issues are whether the log sheet that Officer Double provided to Yellow Cab was in compliance with the requirements of the Public Utility Commission's regulations and if not, what civil penalty is warranted. I&E submits that Yellow Cab's log sheet did not meet the requirements of 52 Pa. Code § 29.313(c)(4) and that the recommended \$50 civil penalty is appropriate.

A. Yellow Cab's Log Sheet Was Deficient

The log sheet provided to Officer Double for the trip at issue in this complaint did not meet the requirements of 52 Pa. Code § 29.313(c)(4). Specifically, the log sheet was missing the following: the end time for the shift, the times and places of origin and destination of each trip including the odometer or meter mileage at the origin and destination of each passenger trip, the street name and address or identifiable landmark of the origin and destination places, correct meter readings for the beginning and end of the shift, and the driver's signature attesting to the accuracy of the data recorded. (BIE Ex. 1). Although Yellow Cab employee Mr. Delk testified that Yellow Cab compiled this information electronically, at the time of this incident, the information could not be accessed by Yellow Cab personnel. (N.T. 55). Instead, Officer Double was given an old manual type of log sheet that was not "totally accurate." (N.T. 55).

Although the Commission's regulations allow for log sheets to be kept in electronic format, these sheets or comparable printouts from an electronic storage device

must be turned over to the Commission upon request. 52 Pa. Code § 29.313(c)(4). In this case, Officer Double was not given any printouts from Yellow Cab's electronic storage device. In fact, Yellow Cab technology specialist, Mr. Delk, testified that such printouts could not be accessed at the time. (N.T. 55). Instead, Officer Double was provided with an insufficient manual log sheet. (BIE Ex. 1).

B. A Civil Penalty of \$50 is an appropriate amount for the log sheet violation.

Because the parties stipulated as to counts 6 and 7 of the complaint, this brief will focus on the appropriate civil penalty regarding the remaining count, which is the log sheet violation at count 8.

A civil penalty of \$50 for the log sheet violation is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

Under the Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (iv) the number of customers affected and the duration of the violation; (v) the Compliance history of the regulated entity that committed the violation; (vi) whether the

regulated entity cooperated with the Commission's investigation; (vii) the Amount of the civil penalty or fine necessary to deter future violations; (viii) past Commission decisions in similar situations; and (ix) other relevant factors. 52 Pa. Code § 69.1201(c).

The first factor considered in this case was whether Respondent's alleged acts and omissions amounted to willful fraud or misrepresentation or were merely administrative or technical errors. The alleged conduct in this case involves failure to provide Commission representatives with a log sheet that conforms to the Commission's regulations. While this is a violation of the Commission's regulations, it does not rise to fraud or misrepresentation.

The second factor considered in this case was whether the resulting consequences of Respondent's alleged actions or omissions were of a serious nature. In this case, Respondent's alleged conduct did not result in any serious consequences. Although, there is potential for fraud and abuse when log sheet aren't accurate, there is no evidence that this happened in this case.

The third factor to be considered in this case, namely, whether Respondent's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. To the extent this factor is to be considered, it appears that Respondent's conduct was negligent in nature.

With regard to the fourth standard in the Commission's Policy Statement, whether the entity made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future, Respondent testified

that it can now access the electronic manifests when needed and that such manifests comply with the Commission's requirements.

The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. In this case, there is no evidence that any customers were affected by the improper log sheet. However, the missing information in the log sheet made Officer Double's investigation more difficult. It is important that the Commission is provided with complete and accurate information in its investigations.

The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has held a certificate from this Commission since 1946. *Yellow Cab has had numerous complaints issued against it during this time period. Since 2011, the Commission has issued twelve formal complaints against Yellow Cab.*

The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission's investigation. Respondent has cooperated throughout this investigation.

The amount of the civil penalty or fine necessary to deter future violations is the eighth standard in the Policy Statement. The parties submit that a civil penalty in the amount of Fifty Dollars (\$50), is sufficient to deter Respondent from committing any log sheet violations in the future. *Yellow Cab is a large company with extensive revenues. A fine of \$50 is certainly not excessive given Yellow Cab's business and revenues.*

The ninth standard examines past Commission decisions in similar situations. Counsel is not aware of any decisions with this precise fact pattern. However, when all relevant factors are taken into account, a \$50 civil penalty is consistent with past Commission actions. Moreover, this civil penalty complies with the Commission's penalty guidelines. *See 66 Pa.C.S. § 3301; Penalty Guidelines (attached as Attachment A).*

There are no additional relevant factors in this matter.

PROPOSED ORDERING PARAGRAPHS

1. That the complaint of the Bureau of Investigation and Enforcement against The Yellow Cab Company of Pittsburgh at PUC Docket No. C-2012-2219127 is sustained as to count 8 of the Complaint, which alleged that Yellow Cab violated 52 Pa. Code § 29.313(c)(4) by failing to provide a complete log sheet.
2. That an appropriate civil penalty for this violation is \$50.
3. That the complaint of the Bureau of Investigation and Enforcement against The Yellow Cab Company of Pittsburgh at PUC Docket No. C-2012-2219127 is sustained as to count 6 of the Complaint, which alleged that Yellow Cab violated 66 Pa. C.S. § 1501 by failing to furnish and maintain adequate, efficient, and reasonable service and facilities for the proper safety and its patrons and public.
4. That Yellow Cab pay a civil penalty of \$500 for this violation.
5. That count 7 of the complaint of the Bureau of Investigation and Enforcement

against The Yellow Cab Company of Pittsburgh at PUC Docket No. C-2012-2219127, alleging failure of direct control and supervision of its operating authority in violation of is 52 Pa. Code § 29.313(c)(4), is withdrawn.

6. That within 60 days of the final Commission order in this proceeding, The Yellow Cab of Pittsburgh shall pay a civil penalty in the amount of \$550 as a result of the violations of 66 Pa. C.S. § 1501 and 52 Pa. Code § 29.313(c)(4) at PUC Docket No. C-2012-2219127. That amount should be made payable to the Commonwealth of Pennsylvania and should be forwarded to:

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

7. That The Yellow Cab of Pittsburgh shall cease and desist from further violations of the Public Utility Commission's code and regulations.

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CONCLUSION

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement urges this Honorable Administrative Law Judge to sustain counts 6 and 8 of the Complaint at C-2012-2219127 and uphold the civil penalties sought.

Respectfully submitted,



Heidi L. Wushinske
Prosecuting Attorney
Attorney ID No. 93792

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Date: January 25, 2013

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A

PENALTY GUIDELINES

PUC Motor Carrier Services & Enforcement

(\$10,000 cap on complaints, unless safety related)
(fine amount format)

Certificate Cancellation plus \$1000 per violation per day
(this is the maximum fine permitted)

Operating while certificate is under suspension –
when a lapse in insurance coverage occurred. 52§32.2, 52§32.11, 66§501(c)

Certificate Cancellation plus \$500

Failure to file evidence of insurance –
no evidence of operating during suspension. 52§32.2, 52§32.11

Failure to pay past due fines. 66§501(c)

Failure to pay past due assessments. 66§510

Certificate Cancellation plus \$250

Failure to submit to SFR. 66§501(c) & 66§1501

Certificate Cancellation

Abandonment of service. 52§3.381(a), 66§1102(a)(2)

Failure to pass Safety Fitness Review. 66§501(c) & 66§1501

Failure to file tariff with rates based on: Meter – Taxis 52§29.314(b)(6)
Time – Limos 52§29.334
(after one complaint adjudication for same violation)

PENALTY GUIDELINES

(continued)

\$1000 per violation

All Critical* violations found during Bus/Truck Audits
(plus cancellation if over \$10,000)

False documentation to cover violations.	Logs - Receipts – Character –	52 §29.313(c) 52 §29.313(f) 66 §1501
Operating without holding a certificate of public convenience. (Maximum \$1,000 per complaint) (The carrier's vehicle registration will also be suspended by PDOT.)		66§1101
Disqualified driver operated a vehicle. (convicted of felony or misdemeanor relating to Suitability to provide safe and legal service).		52§29.505(c)
Disqualified hhgs worker.		52§31.134(c)
Controlled substance/alcohol found during roadside inspections or investigations.	Alcohol Controlled Substance	52§29.506 52§29.507
Household Goods violations – Failure to relinquish goods upon payment of estimate + 10% or \$25.		52§31.123
Disqualified employee (convicted of felony or misdemeanor relating to suitability to provide safe & legal service) packed/unpacked, loaded/unloaded, or operated a vehicle.		52§31.134(c)
Unauthorized transportation (service type violation only; Example - limos performing taxi service).	All types. Limo as taxi – no advance order for service. Limos soliciting passengers. Meter in limo.	66§1102 52§29.332(1) 52§29.332(3) 52§29.334
Household goods carriers - no weight tickets for moves over 40 miles – if found arising from a consumer complaint about overcharge.		52§31.125
Operating Out-Of-Service vehicle before being repaired.		52§29.406(e)
No meter in taxi.		52§29.314(b)(1)
Inoperative meter.		52§29.314(b)(7)

* Critical Violations are those which pose an imminent hazard and have the greatest potential to cause or contribute to an accident.

PENALTY GUIDELINES

(continued)

\$500 per violation per day

Operating while under suspension for insurance – no lapse in coverage.		52§32.2, 52§32.11, 66§501(c)
Any refusal of service.		52§29.313(a)
Lack of control of transportation (leasing authority to others or to drivers).	passenger, except taxi taxi	52§29.101(a)(5) 52§29.101(f)(2)(i)
Inadequate, unreasonable service – major violations: (not showing up, more than ½ hr late, etc. – fine will be \$500). (for minor violations of unreasonable, unsafe service: smoking, unsafe cell phone usage while customer in vehicle, etc. – fine will be \$250).		66§1501 66§1501
All Serious** violations (except hrs of service) found during Bus/Truck Audits.		
Tariff overcharge violation. (No refunds ordered under \$10) (if an audit – undercharge violations due to fuel surcharge, one fine for entire audit) See \$250 page also.	All types PT Taxi GP AT HHG	66§1303 52§29.255 52§29.314(b)(6) & 29.316 52§29.324 52§29.343 52§31.27
Failure to cooperate with an officer's investigation. Each day is a separate violation, with a maximum penalty of \$10,000/month of not producing documents requested during investigation or refusing to allow investigation. (20 working days x \$500)		66§505
Void in service longer than 5 days w/o notifying Commission.		52§29.62
False Record of Duty Status violations found on random inspections or investigations.		52§29.508 (a)(2)
Unauthorized transportation (outside area).		66§1102
Over-aged vehicle.	Taxi Limo	52§29.314(d) 52§29.333(e)

** Serious Violations are those which indicate the carrier has ineffective safety management controls and/or regulatory non-compliance problems attributing a high probability to cause or contribute to an accident.

PENALTY GUIDELINES

(continued)

\$250 per violation

Hours of Service violations (4 or more) found during Bus/Truck Audits.

Tariff undercharge violations (except limousines or GP-15). ***	All types.	66§1303
	PT	52§29.255
	Taxi	52§29.314(b)(6) & 29.316
	AT	52§29.343
	HHG	52§31.27

Taxi – no tariff submitted with rates based on meter. 52§29.314(b)(6)

Limos charging rates other than those based on time
OR no tariff submitted with rates based on time. 52§29.334

Invalid State Inspection. 52§29.405

No dome light on taxi. (see pg 5 for non-illuminated dome light) 52§29.314(e)

No criminal history record on driver. 52§29.505(a)
(see next page for no **current** criminal history record
and for no driver history record)

Household Goods Carriers Violations:

Information for Shippers not provided to shipper 48 hours prior to move.	52§31.121(c)
Estimated Cost of Service not provided to shipper 48 hours prior to move.	52§31.122(a)
Bill of Lading not provided to shipper within 15 days of move.	52§31.132(b)
Insurance Claim violations.	52§32.16
No criminal history record on employees.	52§31.134(a)

(see next page for no **current** criminal history record)

Failure to File Assessment Report. 66§510(b)

No vehicle list filed.	Taxi	52§29.314(c)
(See next page for list filed with missing info)	Limo	52§29.333(d)

***Note to Specialist: To impose a penalty, the undercharge must be more than 10% and an informal complaint investigation or audit must have been involved.

PENALTY GUIDELINES

(continued)

\$200 per violation

Operating while driver's motor vehicle license is under suspension, revoked or expired.

52§29.502 & 75§1543(a)

\$100 per violation

Tariff undercharges***.

All types.	66§1301
GP 11-15	52§29.324
Limo	52§29.334

Non-illuminated dome light when required or dome light not visible from 100 ft front and rear (example: obscured by ad) - (taxi)

52§29.314(e)

No driver history obtained.

52§29.504

No **current** criminal history obtained.

52§29.505(b) or (a) if initial one

Hours of Service violations (1-3) found during Bus/Truck Audits.

Minor**** violations (1st group of 3 + each subsequent violation) found during Bus/Truck Audits.

Out of Service***** Safety violations (one fine per type of violation per vehicle). (Example: door violation)

67§229.16 or 231.9

Non-Out of Service***** Safety violations (1st group of 5).

67§229.14 or 231.7

Exception: no Medical Certificate or expired - \$100 each

52§29.508(a)(1) & 52§37.204(3)

Who must have one

49CFR§391.45(b)

May not operate

49CFR§391.41(a)

Vehicle list missing required information.
(See previous page for NO vehicle list filed)

Taxi

52§29.314(c)

Limo

52§29.333(d)

***Note to Specialist: To impose a penalty, the undercharge must be more than 10% and an informal complaint investigation or audit must have been involved.

**** Minor Violations are those which indicate the carrier has ineffective safety management controls or regulatory non-compliance problems. Example: failing to maintain a driver qualification file on each driver employed containing each of the items required for the specified time period.

***** The OOS Criteria for small vehicles is based upon the rejection criteria from the PA DOT's Vehicle Equipment and Inspection standards, 67 Pa. Code §175.

PENALTY GUIDELINES

(continued)

\$100 per violation (continued)

Household Goods Carriers -		
Information for Shippers -	not retained by carrier	52§31.121(b)
	no shipper signature	52§31.121(a)
	Commission supplied form not used	52§31.121(a)
Estimate -	not maintained by carrier	52§31.122(b)
	required information missing	52§31.122(a)
Underestimate Report -	not filed	52§31.124
No weight tickets for moves over 40 miles (if violation found during audit)		52§31.125
Inventory list or waiver -	not prepared before shipment loaded (under 40 miles)	52§31.133(b)
No current criminal history record on employee.		52§31.134(b)
*****Passenger Service vehicle violations.		
	Unclean vehicle	52§29.403(2)
	No heater	52§29.403(3)
	Unsuitable/unclean trunk	52§29.403(4)
	Dents/gouges exterior	52§29.403(6)
	Unmatched wheel covers	52§29.403(7)
	No air conditioning	52§29.403(8)
	Damaged/unsecured seats	52§29.403(9)
Shortest practical route not used.		52§29.313(b)
Under-age driver.		52§29.503

***** One fine per type of violation per vehicle on random inspections, one fine per violation for entire fleet on annual inspections.

PENALTY GUIDELINES

(continued)

\$50 per violation

Non-OOS safety violations (6th or more).

*****Markings violations.	Passenger	52§29.71
	Property	52§31.33
Advertising not on roof.		52§29.402(3)
Certificate # not on advertisement.		52§21.2
*****Administrative violations.		
Logs - taxi		52§29.313(c)
Trip sheet - limo		52§29.335
Lease – passengers		52§29.101(b)(2)
Lease – property		52§31.32(c)(2)(vii)
Receipt – taxi		52§29.313(f)
Fare posting – taxi		52§29.316(c)
Consumer info	Decal	taxi 52§29.318
	Decal or receipt	scheduled route 52§29.306
	Decal or receipt	airport transfer 52§29.344
	Decal or receipt	paratransit 52§29.356
	Decal, receipt or contract	limo 52§29.336

***** One fine per type of violation per vehicle on random inspections, one fine per violation for entire fleet on annual inspections.

NOTE: All fines are doubled if the same safety violation is found during another inspection before it has been corrected.

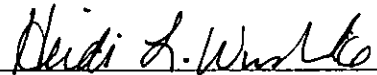
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by first class mail addressed as follows:

Ray F. Middleman, Esquire
Malone Middleman, P.C.
Northridge Office Plaza
117 VIP Drive, Suite 310
Wexford, PA 15090
(also via e-mail)

The Honorable Katrina L. Dunderdale
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222
(also via e-mail)



Heidi L. Wushinske
Prosecutor
Attorney ID #93972
(Counsel for Pennsylvania Public Utility
Commission)

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Dated: January 25, 2013

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