



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

IN REPLY PLEASE  
REFER TO OUR FILE

February 8, 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 Reply 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 :

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COMPLAINANT PENNSYLVANIA PUBLIC  
UTILITY COMMISSION'S REPLY BRIEF

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Prosecutor

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Dated: February 8, 2013

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## SUMMARY OF REPLY ARGUMENT

Prior to the hearing, the parties stipulated as to the portions of the complaint alleging improper service and failure of Yellow Cab of Pittsburgh (Yellow Cab) to be in direct control and supervision of its operating authority. Yellow Cab did not dispute the violation for unreasonable service or dispute the testimony of the Bureau of Investigation and Enforcement's (I&E's) witness, Clayton Davis. (N.T. 7-11). Therefore, the penalty should not be reduced. A \$500 civil penalty is warranted under the circumstances.

Regarding the log sheet, accepting Respondent's argument that there was no violation because the electronic manifests existed, even though they were not and could not be turned over to Commission staff, would seriously impede Commission investigations and render the Commission's log sheet regulations virtually meaningless.

**A. A Civil Penalty of \$500 is an appropriate amount for the improper service violation.**

I&E disputes Yellow Cab's assertion that the factors regarding the unreasonable service that Yellow Cab provided to Mr. Davis lead to the conclusion that the civil penalty for this violation should be reduced.

A civil penalty of \$500 for the unreasonable service 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 reasonable service to a customer. While this violation of the Commission's regulations does not arise to fraud, I&E alleges that it does constitute misrepresentation. On January 4, 2011, Mr. Davis testified that he continuously called Yellow Cab between approximately 1:20 p.m. and 3:45 p.m., making about five phone calls. (N.T. 16-18). The first two times Mr. Davis spoke to a Yellow Cab employee, he was told that a cab would be arriving in half an hour. (N.T. 17-19). The third time Mr. Davis called, a Yellow Cab employee told him that it could be a half hour to an hour before he could get a cab. (N.T. 17-19). This constitutes misrepresentation to Mr. Davis.

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 seriously affected Mr. Davis' day. Mr. Davis testified that his "whole day was shot" and that he couldn't do anything. (N.T. 18).

The third factor to be considered in this case is whether Respondent's alleged conduct was intentional or negligent. There is no evidence that Respondent intentionally kept Mr. Davis waiting for a cab. However, Respondent was negligent in allowing a situation like this to occur, where a customer is forced to wait for over two hours for a cab while being repeatedly told by Respondent's employees that the cab will be there in a half hour. (N.T. 16-19).

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 took steps to correct its dispatch system, which primarily involved hiring an expert to oversee the system. (N.T. 21-23, 40-58). While these remedial measures seem to be a good step towards correcting the problems, they were not instituted until nearly a year after Mr. Davis' unreasonable service incident. (N.T. 21, 41).

The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. In this case, only one customer, Mr. Davis, was affected. The violation occurred between 1:20 and 3:45 p.m., the time period in which Mr. Davis was waiting for a cab and being told by Yellow Cab that a cab would arrive in half an hour. (N.T. 17-19).

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. I&E submits that a civil penalty in the amount of five hundred (\$500), is sufficient to deter Respondent from committing any similar violations in the future. While the record shows that Yellow Cab has taken measures to correct the past problems with its dispatch system, a civil penalty in this case is necessary to deter any future dispatch errors and dissemination of incorrect information by Yellow Cab operators. (N.T. 21-23, 40-58). Furthermore, Yellow Cab is a large company with extensive revenues. A fine of \$500 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 \$500 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 to I&E's main brief as Attachment A).

It is not incumbent upon I&E to establish the wisdom of the Commission approved fine schedule. The appropriate fine is established by looking to the Commission approved penalty guidelines, barring any mitigation that Respondent may establish. In this case, Respondent failed to establish mitigation that warrants deviating from the proposed fine, which was consistent with the Commission approved penalty guidelines. Furthermore, it is the Commission's policy to impose the fine recommended in the complaint based on the fine schedule. *Pa. PUC v. Tropiano Airport Shuttle*, Docket No. A-00110899C9601 (Order entered may 27, 1997).

**B. Yellow Cab's failure to provide an accurate log sheet violated 52 Pa. Code § 29.313.**

Accepting Yellow Cab's argument that there was no violation because the electronic manifests existed, even though they were not and could not be turned over to Commission staff, would seriously impede Commission investigations and render the Commission's log sheet regulations virtually meaningless. Yellow Cab argues that "[t]he only deficiency with respect to the electronic manifest claimed by the PUC is that Yellow Cab did not *immediately* produce the log when request by Mr. Double." (emphasis added) (*Respondent's Brief* at 11). In fact, Yellow Cab did not provide an accurate log sheet to the Commission until the week of the hearing, nearly two years after Officer Double completed his investigation. (N.T. 39). Yellow Cab's witness, George Frances Delk, II, testified that no one at Yellow Cab could even access the electronic manifests at the time of Officer Double's investigation. (N.T. 55). Providing the necessary information nearly

two years after the fact does not allow the Commission to complete a thorough investigation.

Accepting Yellow Cab's argument that its conduct regarding the log sheets satisfies the Commission's requirements in 52 Pa. Code § 29.313 renders the regulations practically meaningless. Under such an interpretation, a company could provide Commission personnel with incorrect or incomplete log sheets, provided that the correct information was stored somewhere in an electronic manifest, even if such information cannot or will not be produced.

Yellow Cab provided a log sheet that violated the requirements of 52 Pa. Code § 29.313 to the Commission during the course of the investigation. (N.T. 26-28). The mere fact that nearly two years later Yellow Cab produced an electronic manifest containing the required information does not absolve it from failing to provide an accurate log sheet to Officer Double during the course of his investigation.

## 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,



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Prosecuting Attorney  
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**Date: February 8, 2013**

## CERTIFICATE OF SERVICE

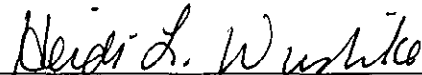
I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

### Notification by first class mail addressed as follows:

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Dated: February 8, 2013