



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

IN REPLY PLEASE
REFER TO OUR FILE

November 13, 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-2012-2249031**

Dear Secretary Chiavetta:

Pursuant to the provisions of 52 Pa. Code § 5.533, please accept for filing The Bureau of Investigation and Enforcement's Exceptions to the Initial Decision issued in the above referenced matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Heidi L. Wushinske".

Heidi L. Wushinske
Prosecutor

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission :
Bureau of Investigation & Enforcement :
 : Docket No. C-2012-2249031
v. :
 :
Yellow Cab Co. of Pittsburgh :

**EXCEPTIONS OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE INITIAL DECISION ISSUED OCTOBER 24, 2013.**

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission, through Prosecutor Heidi Wushinske, files the following Exceptions to the Initial Decision of Administrative Law Judge (ALJ) Mary D. Long, issued October 24, 2013.

STATEMENT OF THE CASE

Pursuant to its enforcement responsibilities, on July 26, 2012, the Public Utility Commission's Bureau of Investigation and Enforcement issued a complaint (C-2012-2249031) against The Yellow Cab Company of Pittsburgh (Yellow Cab) for violations arising from a customer complaint. Specifically, I&E alleged that Yellow Cab's driver refused to provide service in violation of 52 Pa.Code § 29.313(a) and 66 Pa.C.S. § 1501. On August 6, 2012, I&E served Yellow Cab with an amended complaint. Yellow Cab timely filed an answer and new matter in which it denied any violations. I&E timely filed an answer denying the material allegations in Yellow Cab's new matter.

The Honorable Mary D. Long held a hearing in this matter on September 5, 2013, at which both parties appeared. I&E presented the testimony of two witnesses and offered into evidence three documents. Yellow Cab presented the testimony of one witness, the taxi driver, and did not offer into evidence any documents.

ALJ Long issued an *Initial Decision* on October 24, 2013, wherein she found that: 1) the Commission has jurisdiction over the subject matter of the dispute, and 2) there was no evidence that a driver of Yellow Cab improperly refused to provide taxi service. *Initial Decision* p. 4. I&E objects only to the ALJ's second finding and to her conclusion that I&E did not offer *any* evidence to refute the testimony of Yellow Cab's witness. *Id.*

EXCEPTIONS TO THE INITIAL DECISION

- 1. I&E excepts to the finding that I&E did not offer any evidence to refute the testimony of Yellow Cab's witness, Mr. Jones, *Initial Decision* p. 4.**

As the ALJ stated, the burden of proof in this case is a preponderance of the evidence standard. *Initial Decision* p. 3. Pennsylvania courts have defined this evidentiary standard as the lowest evidentiary standard; a "more likely than not" standard. *Comm. v. Assorted Consumer Fireworks*, 16 A.3d 554 (Pa. Cmwlth. 2011) (citing *Comm. v. \$6, 425.00 seized from Esquilin*, 880 A. 2d 523, 555 (Pa. 2005)). The record in this case reflects that I&E met this minimal evidentiary standard.

I&E met its burden of proof as defined by Pennsylvania law. The record in this case reflects that I&E submitted the evidence of two witnesses and admitted three

documents substantiating its complaint. *Initial Decision* p. 3. I&E submits that the ALJ erroneously concluded that I&E did not offer any evidence to refute the testimony of Mr. Jones, Yellow Cab's driver. *Initial Decision*, p. 4.

I&E first presented the testimony of Dr. John Hooker, a Carnegie Mellon professor who attempted to obtain a taxi at the Amtrak station in Pittsburgh on the morning of June 22, 2011. *N.T.* 6-11,13. Dr. Hooker testified that he called Yellow Cab four times in the space of an hour. *N.T.* 6. He also testified that a Yellow Cab pulled up at the station and that when he approached it to ask for service, the driver first asked him where he was going. *Id.* Dr. Hooker identified Mr. Jones as the driver of the Yellow Cab that he approached. *Id.* Dr. Hooker testified that it was only after he told Mr. Jones where he was going that Mr. Jones told him that he would not take him because he had another fare. *Id.* According to Dr. Hooker's testimony, he then waited another half hour for a cab before giving up and walking to the bus stop. *Id.* Dr. Hooker then took the bus home, got his car, and returned to the Amtrak station to pick up his wife and their luggage. *Id.* Dr. Hooker testified that this entire process took approximately two to two and a half hours. *Id.* Dr. Hooker also testified that this was not the first time that he had an issue like this with Yellow Cab, which is why he decided to file a complaint. *Id.*

I&E then presented the testimony of Officer Christopher Urey, who testified that he conducted an investigation into Dr. Hooker's complaint. *N.T.* 17-37. Officer Urey testified that during the course of his investigation, he received a log sheet from Yellow Cab for cab number 520, Mr. Jones's cab. *N.T.* 26-27. This log sheet was admitted into

the record as I&E #2. The log sheet for cab number 520 showed only three trips, all going to the Pittsburgh airport, and no trip originating or ending at the Amtrak station. *N.T.* 27, 37. Officer Urey further testified that it was his conclusion that Dr. Hooker contacted Yellow Cab multiple times, was refused service by cab #520 (Mr. Jones), and never received a ride that day from Yellow Cab. *N.T.* 35.

Yellow Cab presented the testimony of only one witness, Mr. Jones, and did not offer into evidence any documents to refute the testimony and evidence submitted by I&E. Yellow Cab did not submit any evidence to rebut the fact that the log sheet showed only three trips, all to the airport, other than Mr. Jones testifying that he had another fare at the time Dr. Hooker approached his cab and that he just didn't put the Amtrak trip on his log sheet because he was "in a hurry," despite having the opportunity to correct the log sheet later in the day. *N.T.* 40-41, 47.

The ALJ erroneously found that I&E did not offer any evidence to refute Mr. Jones's testimony. *Initial Decision* p. 4. This is simply not true. The record reflects that I&E submitted a log sheet that directly contradicts Mr. Jones's testimony, as well as the testimony of Dr. Hooker that Mr. Jones only informed him that he had another fare after Dr. Hooker informed him of his destination.

In short, I&E met its burden of proof through credible witness testimony and documentary evidence, as discussed above. Yellow Cab's defense to I&E's complaint centers around its assertion that Mr. Jones dropped off a passenger at the Amtrak station and was then booked for another trip, which is why he could not accept Dr. Hooker's


fare. However, Yellow Cab offered no evidence to substantiate this defense or to rebut I&E's documentation to the contrary. Yet, the ALJ inexplicably found that there was "no evidence that a driver of Yellow Cab improperly refused to provide taxi service." *Initial Decision* p. 4, Conclusion of Law #2.

2. I&E excepts to the ALJ's conclusion of law that there was "no evidence that a driver of Yellow Cab improperly refused to provide taxi service," *Initial Decision* p. 4, Conclusions of Law #2.

I&E submits that the ALJ's Conclusion of Law #2 is erroneous. The ALJ found that there was "no evidence that a driver of Yellow Cab improperly refused to provide taxi service." *Initial Decision*. p. 4, *emphasis added*. For some unexplained reason, the ALJ apparently chose to ignore the testimony of a university professor, a PUC enforcement officer, and undisputed documentary evidence, and failed to specify why she did so. Contrary to the ALJ's finding, I&E did, obviously, provide evidence that Yellow Cab improperly refused service; the ALJ, for some unknown reason, chose not to accept this evidence. In effect, the ALJ gave no weight to the testimony of I&E's customer witness, Dr. Hooker; its enforcement officer, Officer Christopher Urey; or the evidence I&E submitted, including Yellow Cab's own log sheet. Moreover, the *Initial Decision* does not even explain how or why the ALJ reached this conclusion, which is contrary to the minimal required evidentiary standards that she, herself, set forth.

WHEREFORE, for the foregoing reasons, I&E requests that the Commission grant I&E's exceptions, sustain the complaint and impose the fine as requested.

Respectfully submitted,



Heidi Wushinske
Prosecutor
Bureau of Investigation and Enforcement

Wayne T. Scott
First Deputy Chief Prosecutor
Bureau of Investigation and Enforcement

Dated: November 13, 2013

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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
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117 VIP Drive, Suite 310
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(also via e-mail)

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



Heidi L. Wushinske
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Dated: November 13, 2013

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