



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

IN REPLY PLEASE  
REFER TO OUR FILE

February 7, 2014

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. Germantown Cab Company t/a Germantown Taxi;  
C-2012-2318101**

Dear Secretary Chiavetta:

Pursuant to the provisions of 52 Pa. Code § 5.502, please accept for filing The Bureau of Investigation and Enforcement's Brief in the above referenced matter.

Very truly yours,

A handwritten signature in black ink that reads "Heidi L. Wushinske".

Heidi L. Wushinske  
Prosecutor

Enclosures

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**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
**Bureau of Investigation and Enforcement** :  
 :  
 :  
 v. : **Docket No. C-2012-2318101**  
 :  
 :  
**Germantown Cab Co. t/a Germantown** :  
**Taxi** :

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**COMPLAINANT PENNSYLVANIA PUBLIC  
UTILITY COMMISSION'S BUREAU OF INVESTIGATION AND  
ENFORCEMENT'S BRIEF**

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Heidi L. Wushinske  
Prosecutor

Wayne T. Scott  
First Deputy Chief Prosecutor

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Dated: February 7, 2014

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## STATEMENT OF THE CASE

Pursuant to its enforcement responsibilities, the Public Utility Commission's ("PUC" or "Commission") Bureau of Investigation and Enforcement ("I&E") issued a complaint against Germantown Cab Company ("Germantown" or "Respondent") for violations found during an annual inspection of Respondent's vehicles. On September 5, 2012, Germantown filed a timely answer in which it alleged that in light of recent amendments to Chapter 57 of the Philadelphia Parking Authorities Law, the Commission no longer had jurisdiction or regulatory authority over Germantown. 53 Pa.C.S. §§ 5701-5745. The Honorable Cynthia W. Fordham held a hearing on November 18, 2013, at which both parties appeared and presented the testimony of witnesses regarding Germantown's violations. At the end of the hearing, Judge Fordham directed the parties to file briefs containing proposed findings of fact; a discussion of the standards set forth in *Joseph A. Rosi v. Bell Atlantic -Pennsylvania, Inc. and Sprint communications Company, L.P.*, and in the Commission's regulations; and a discussion of the Commission's jurisdiction in this matter. (Tr. 90-91; Briefing Order dated December 5, 2013).

## **PROPOSED FINDINGS OF FACT**

1. The Respondent is Germantown Cab Co. The Respondent maintains its principal place of business at 800 Chestnut Street, Philadelphia, PA 19107.

2. Germantown was issued a certificate of public convenience by this Commission on September 5, 1996 for call or demand authority, at Docket No. A-00110733.

3. On July 31, 2012, an annual inspection was performed at the Respondent's premises by Enforcement Officers Ralph Kane, Anthony Bianco, and Gerard King, all duly authorized officers of the Commission. (Tr. 7-63; I&E 1, 3, 4, 5).

4. Officer Bianco was the officer in charge of Respondent's annual inspection. (Tr. 11).

5. The Respondent had one day advance notice of the inspections. (Tr. 11).

6. Respondent cooperated with the inspection and did not object prior to or during the inspection. (Tr. 56, 62, 89).

7. The Respondent has authority to operate in Montgomery County, Norristown, Conshohocken, Plymouth Meeting, parts of Blue Bell, Woodhaven, as well as a small portion of Philadelphia in the northwest section of the city, including Germantown, Chestnut Hill, and Roxborough. (I&E 2).

8. At the time of the inspection, there were approximately 145 vehicles in Respondent's fleet, based on a list that Respondent provided to the Commission. (Tr. 20).

9. The Commission's enforcement officers inspected 51 of them, selected randomly. (Tr. 21; I&E 1, 3, 4, 5).

10. Respondent has two premises, one in the Germantown area of Philadelphia and one in Norristown. (Tr. 11).

11. The Commission's enforcement officers inspected 39 vehicles at Respondent's location in Philadelphia. (Tr. 11).

12. The remaining cabs, which had no violations, were inspected at Respondent's other location. (Tr. 11).

13. During the inspection at the Philadelphia premises, nine violations were found, including four mechanical violations, two meter violations, and three other violations. (Tr. 7-63; I&E 1, 3, 4, 5).

14. On July 31, 2012, at approximately 10:40 a.m., at 5350 Belfield Avenue, Philadelphia, Philadelphia County, Pennsylvania, Enforcement Officer Bianco inspected the Respondent's 2005 Ford taxi, bearing Pennsylvania License No. TX44840, Vehicle Identification No. 2FAhP71W95X104776. (I&E 1).

15. Enforcement Officer Bianco found the following violation:

- a. Meter improperly calibrated resulting in a fare which is higher than the tariff rate on file with the Commission. (Tr. 13-15; I&E 1).

16. On July 31, 2012, at approximately 10:15 a.m., at 5350 Belfield Avenue, Philadelphia, Philadelphia County, Pennsylvania, Officer Bianco inspected the Respondent's 2005 Ford taxi, bearing Pennsylvania License No. TX43425, Vehicle Identification No. 2FAhP71W85X121164. (Tr. 15-16; I&E 1).

17. Officer Bianco found the following violations:

- a. Non-illuminated dome light;
- b. No steady burning stop lamp visible to 500 feet. (Tr. 15-17;, I&E 1).

18. On July 31, 2012, at approximately 10:28 a.m., at 5350 Belfield Avenue, Philadelphia, Philadelphia County, Pennsylvania, Officer Bianco was present while Supervisor Alexander Zinczenko inspected the Respondent's 2006 Ford taxi, bearing Pennsylvania License No. TX46163, Vehicle Identification No. 2FAFP71W06X133732. (Tr. 18; I&E 3).

19. Enforcement Officer Bianco and Supervisor Zinczenko found the following violations:

- a. Non-illuminated dome light or dome light not visible from 100 feet front and rear;
- b. Failure to have consumer info decal on vehicle. (Tr. 18-19; I&E 3).

20. On July 31, 2012, at approximately 12:33 p.m., at 5350 Belfield Avenue, Philadelphia, Philadelphia County, Pennsylvania, Officer Kane inspected Respondent's 2007 Dodge taxi, bearing Pennsylvania License No. TX47921, Vehicle Identification No. 2D8GP44157R292001. (Tr. 51-53; I&E 4).

21. Officer Kane found the following violation:

- a. Meter improperly calibrated resulting in a fare which is higher than the tariff rate on file with the Commission. (Tr. 51-53; I&E 4).

22. On July 31, 2012, at approximately 9:45 a.m., at 5350 Belfield Avenue, Philadelphia, Philadelphia County, Pennsylvania, Enforcement Officer King inspected the Respondent's 2005 Ford taxi, bearing Pennsylvania License No. TX47758, Vehicle Identification No. 2FAFP71W95X171717. (Tr. 59-60; I&E 5).

23. Enforcement Officer King found the following violations:

- a. Failure to have consumer info decal in vehicle;
- b. Failure to post rates of fare in taxi.

24. There were no adverse weather conditions at the time of Respondent's annual inspection. (Tr. 44).

25. The Commission's Officers did not inspect any taxis that did not have a PUC number on them. (Tr. 44).

26. There are two rates on Respondent's meters: Rate 1 and Rate 2. Rate 1 is the rate authorized by the Philadelphia Parking Authority and Rate 2 is the rate authorized by the Commission. (Tr. 33, 52).

27. The Commission's enforcement officers informed Respondent at the time of the inspection to use its PUC rates. (Tr. 33-39).

28. It is up to the carrier to select the correct meter rate at the time of inspection. (Tr. 52-53).

29. At the mile marker, the meter should register \$4.80 to comply with the Commission approved rate for Respondent. (Tr.15; I&E 2).

30. If the Commission receives a complaint about a trip that was strictly a Philadelphia trip, the customer is informed to contact the Philadelphia Parking Authority. (Tr. 31).

31. Respondent believes that the PUC has sole authority over it, pays annual assessments to the PUC, and filed a tariff with the PUC. (Tr. 89).

32. Respondent acknowledged that it has to comply with the Commission's regulations. (Tr. 83).

### **THE COMMISSION'S POLICY STANDARDS**

In *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P.*, Docket No. C-00992409 (Order entered March 16, 2000), the Commission adopted standards to be applied to determine the amount of the civil penalty in slamming cases. The Commission subsequently determined that all violations of the Public Utility Code and the Commission's regulations, not just slamming cases, should be subject to review under the standards enunciated in *Rosi. Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (Order entered December 21, 2000).

The first factor to be considered under the Policy Statement is whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or was merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). There is no evidence that the Respondent's actions in this matter are willful fraud or misrepresentation. As noted by both Respondent and the Commission's enforcement officers, Respondent cooperated throughout all phases of the investigation. (Tr. 56, 62, 89). Furthermore, other than the lack of a steady burning stop lamp in one of the vehicles inspected, none of the violations found were violations that could impact safety.

The second factor to be considered under the Policy Statement is whether the resulting consequences of the conduct at issue were of a serious nature, such as personal injury or property damage. 52 Pa. Code § 69.1201(c)(2). It is not clear how long the violations existed prior to the inspection. Respondent testified that it fixed all of the violations at the time of the inspection. (Tr. 81). There was no evidence of a personal injury or property damage due to any of the violations.

The third factor to be considered under the Policy Statement is whether the conduct at issue was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). There is no evidence that the Respondent intentionally or negligently failed to comply with the Commission's regulations and inspection. Therefore, the Respondent's conduct in this case should be deemed unintentional. Respondent also testified that it inspects its vehicles on a daily basis and corrects any violations on the spot. (Tr. 73, 89).

The fourth factor to be considered under the Policy Statement is whether the Respondent entity has made efforts to change its internal practices and procedures to address the conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Respondent testified that it has made efforts to improve its record, resulting in a great reduction in the amount of violations found during its annual inspection. (Tr. 78). Specifically, Respondent testified that it prepares all year for the annual inspection. (Tr. 78-82). Due to its procedures, Respondent has gone from violations totaling \$9,950.00 stemming from its 2010 annual inspection to \$750.00 in violations in the inspection at issue. (Tr. 81).

The fifth factor to be considered under the Policy Statement relates to the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). There is no evidence in the record indicating whether customers were affected. Respondent testified that it corrected all of the violations at the time of the inspection. (Tr. 81).

The sixth factor to be considered under the Policy Statement is the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). Respondent has had a great number of violations resulting from its annual inspections in the past. (Tr. 81).

The seventh factor to be considered under the Policy Statement is whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). In this case, the evidence in the record shows that the Respondent fully cooperated with the Commission's staff during the annual inspection and throughout all phases of the investigation. (Tr. 56, 62, 89).

The eighth factor to be considered under the Policy Statement is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The Commission has penalty guidelines that it applies for similar violations in similar cases. Respondent testified that litigating this case costs ten times the amount of the civil penalties at issue. (Tr. 87). I&E asserts that a civil penalty of \$750 will deter future violations.

The ninth factor in the Policy Statement examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Commission's Division of Motor Carrier Services and Enforcement follows penalty guidelines that it applies to similar violations in similar cases. The penalties proposed in this case are consistent with prior decisions and are appropriate based upon the circumstances of this case.

The tenth factor in the Policy Statement examines other relevant factors. 52 Pa. Code § 69.1201(c)(10). There are no other relevant factors to examine.

## THE COMMISSION HAS JURISDICTION IN THIS MATTER

### A. The evidence supports a finding that the Commission has jurisdiction over Respondent

Respondent's arguments that the Commission lacks jurisdiction over this matter are without merit. The Commission's regulations grant it authority to inspect taxicabs. Pursuant to 52 Pa. Code § 29.406(a), Commission enforcement officers may conduct inspections of vehicles either by stops or by entering the company's premises.

(a) An enforcement officer employed by the Commission is authorized to perform inspections of vehicles to determine compliance with this subchapter under 66 Pa.C.S. §§ 307 and 506 (relating to inspectors for enforcement; and inspection of facilities and records). To perform these inspections, Commission enforcement officers are authorized to stop vehicles in operation. Commission enforcement officers are also authorized to enter upon the premises of the agent or lessee of a common carrier or contract carrier at a reasonable time for the purpose of performing inspections upon vehicles used in regulated operations.

52 Pa. Code § 29.406(a).

The Commission is solely responsible for regulating taxicab service outside Philadelphia. *Ronald Cab, Inc. v. Pa.PUC*, 76 A.3d 74, 76 (Pa. Commw. Ct. 2013). Furthermore, “[t]axicabs that are licensed by the Commission do not become the business of the Parking Authority simply by crossing the border of Philadelphia.” *Rosemont Taxicab Co., Inc. v. Philadelphia Parking Auth.*, 68 A.3d 29, 38 (Pa. Commw. Ct. 2013) (reversing and remanding the Philadelphia Parking Authority's (“PPA”) order denying a transfer of rights application).<sup>1</sup>

The evidence overwhelmingly supports a finding that the Commission has jurisdiction over the Respondent. First, on the date of the inspection at issue and at all

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<sup>1</sup> Although the cabs at issue in *Rosemont* held PUC only authority, the Court's reasoning is also applicable to partial rights cabs. There are situations in which the PUC's jurisdiction over a partial rights cab would extend into Philadelphia. For example, a trip that originates outside of Philadelphia in the cab's PUC certificated service area and ends in Philadelphia, outside of the cab's PPA certificated area, would be a PUC jurisdictional trip. However, a trip that takes place entirely within Philadelphia would be a PPA regulated trip. See 53 Pa. C.S. § 5714(d)(2) (setting forth the PPA's jurisdiction over cabs with non-citywide authority as being within the cab's designated area within the city).

times since, Germantown held authority from the Commission to provide taxicab service outside of Philadelphia. *See* Docket No. A-00110733. Second, Germantown has tariffs on file with the Commission and pays annual assessments to the Commission. (Tr. 89). Finally, Germantown acquiesced to the current regulatory structure since it was established by Act 94 of 2004 in 2005, never challenging it until years later.

At no time during the course of the annual inspection at issue did Germantown object to the inspection based on lack of jurisdiction. Both Respondent and the Commission's enforcement officers testified that Respondent was cooperative during the annual inspection. (Tr. 56, 62, 89). In fact, Respondent's witness, Germantown's Vice President and General Manager, testified that he desired to comply with the Commission's regulations and that he believed that the Commission has sole authority over Germantown. (Tr. 89). Respondent's Vice President and General Manager further testified that he focuses on complying with the PUC regulations and that all of Germantown's rights are under the PUC. (Tr. 83).

The Commission has already found that it has jurisdiction to conduct annual inspections of Germantown's vehicles. *Pennsylvania Public Utility Commission Bureau of Transportation and Safety v. Germantown Cab Co.*, Docket No. C-2010-2175330 (Order entered February 14, 2013). In that Order, the Commission determined that all of the Respondent's vehicles were subject to inspection by the Commission as none of them operated solely under the PPA's jurisdiction, i.e., solely within Philadelphia on a non-citywide basis. *Id.* This case presents a nearly identical factual situation. A finding that the Commission lacks jurisdiction to inspect Germantown's cabs at Germantown's own premises would create an inconsistent result.

Moreover, Germantown even admits that it should be regulated by the Commission and offered testimony and evidence supporting this admission.

**B. The Commission Should Not Dismiss This Complaint Because the Inspection Occurred at Respondent's Philadelphia Facility**

During the hearing, Germantown moved to dismiss the complaint, alleging that all of the inspections at issue occurred beyond the PUC's jurisdictional limits because they occurred at Germantown's Philadelphia premises.<sup>2</sup> (Tr. 64). This motion should be denied.

Germantown's argument is contrary to the Commission's regulations. The Commission's regulations give its enforcement officers the authority to conduct inspections of vehicles used in regulated operations on Respondent's premises. 52 Pa. Code § 29.406(a). In this case, the inspections occurred on Germantown's premises. As stated previously, it is not disputed that the vehicles at issue were used in regulated operations. Therefore, the Respondent's motion to dismiss the complaint should be denied.

No testimony or evidence was introduced disputing that the Commission has jurisdiction to inspect Respondent's vehicles at its Germantown premises and Respondent testified that it cooperated with the annual inspection. (Tr. 89). The Commission has been inspecting Respondent's cabs at its Germantown location for years and Respondent has never objected that this venue was improper or outside the Commission's jurisdiction. Furthermore, Respondent had advanced notice that the Commission's enforcement officers were going to inspect its cabs at its Germantown location, yet Respondent did not object before or during the inspection.

Accepting Respondent's argument would lead to the unworkable conclusion that the Commission has absolutely no jurisdiction over its certificate holders as soon as they cross the border into Philadelphia. Such a finding is contrary to case law and the regulatory structure. *See* 53 Pa.C.S. § 5714(d)(2); 66 Pa.C.S. § 102; *Rosemont Taxicab Co., Inc.* at 38. Furthermore, accepting Respondent's argument would lead to a

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<sup>2</sup> The inspections at issue occurred at Germantown's Germantown location, which is within the city of Philadelphia.

jurisdictional void in which Germantown's operations would be unregulated by the PPA or the PUC in certain situations.<sup>3</sup>

In this case, all of the cabs that the Commission's enforcement officers inspected were cabs with Commission authority. (Tr. 53). Respondent did not offer any testimony or evidence to dispute the officers' testimony that the cabs they inspected were all subject to the Commission's jurisdiction. Rather, Respondent alleged that the inspections should be dismissed because they occurred at Respondent's premises in Philadelphia. For the reasons stated above, Respondent's argument is without merit, contrary to the regulatory structure and case law, and would create a regulatory void. Respondent's motion should be denied.

### **PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and subject matter in this case.
2. Respondent's motion to dismiss the complaint is denied.
3. That the Respondent, by having a non-illuminated dome light on its taxi or a dome light not visible from 100 feet front and rear, violated 52 Pa. Code § 29.314(e).
4. That the Respondent, by failing to display a Commission-issued complaint decal on its vehicle, violated 52 Pa. Code § 29.318.
5. That the Respondent, by failing to have a steady burning stop lamp

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<sup>3</sup> For example, under Respondent's proposed scheme whereby the Commission has no jurisdiction once Germantown's cabs enter Philadelphia, a trip originating in Philadelphia, but outside of Germantown's PPA certificated area, and ending in outside of Philadelphia in Germantown's PUC certificated area would be unregulated.

visible to 500 feet, violated 52 Pa. Code § 29.402(1) and 67 Pa.C.S. § 175.96(a).

6. That the Respondent, by having a fast meter, violated 52 Pa. Code § 29.314(b)(6).

7. That the Respondent, by failing to post rates of fare in its taxi, violated 52 Pa. Code § 29.316(c).

### **PROPOSED ORDERING PARAGRAPHS**

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by the Commission's Bureau of Investigation and Enforcement against Germantown Cab Company at Docket No. C-2012-2318101 is sustained.

2. That the Respondent shall pay a civil penalty of seven hundred and fifty dollars (\$750.00) as provided for in Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, by certified check or money order within thirty (30) days after service of the Commission's Order and forwarded to:


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

3. That the Respondent cease and desist from further violations of the Public Utility Code and the Commission's regulations.

4. That the record in this case be marked closed.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement urges this Honorable Administrative Law Judge to deny Respondent's motion to dismiss and sustain the complaint.

Respectfully submitted,



Heidi L. Wushinske  
Prosecutor  
Attorney ID No. 93792

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Date: February 7, 2014

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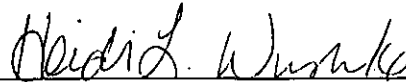
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I hereby certify that I am this day serving the foregoing document upon the persons listed and in the manner indicated below:

**Notification by first class mail and electronic mail addressed as follows:**

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The Honorable Cynthia W. Fordham  
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Office of Administrative Law Judge  
801 Market Street  
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Heidi L. Wushinske  
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