**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

Bureau of Investigation and Enforcement :

:

v. : C-2015-2428311

:

Pocono Cab Company, LLC :

**ORDER DENYING PRELIMINARY OBJECTIONS**

On March 12, 2015, the Pennsylvania Public Utility Commission’s (Commission’s) Bureau of Investigation and Enforcement (I&E) filed a complaint with the Commission against Pocono Cab Company, LLC. (Pocono). The complaint alleges that on June 21, 2014, Pocono charged a passenger an improper rate of $25.00 which was more than the amount of $19.25 specified in Pocono’s tariff on file with the Commission, violating 66 Pa.C.S. § 1303, 52 Pa.Code §§ 29.314(b)(6) and 29.316. The complaint requests that the Commission assess a civil penalty of $500.00 for the alleged violations.

On March 25, 2015, Pocono filed preliminary objections to I&E’s complaint. Pocono’s preliminary objections allege that I&E’s complaint is insufficiently specific, pursuant to 52 Pa. Code § 5.101(a)(3) and fails to join a necessary party, pursuant to 52 Pa. Code § 5.101(a)(5). Since Pocono has filed a preliminary objection alleging insufficient specificity, pursuant to 52 Pa. Code § 5.101(a)(3), it is not required to file an answer to I&E’s complaint until further direction of the presiding officer or Commission, pursuant to 52 Pa. Code § 5.101(e)(1).

Pocono’s preliminary objections assert that I&E’s complaint is insufficiently specific by failing to allege the name of the passenger who was overcharged, the time of the alleged transportation, the point of origination and destination of the alleged transportation, the name of Pocono’s driver or the vehicle license plate number or other identifying markings on the vehicle.

According to the preliminary objections, without the name of the passenger, Pocono is unable to ascertain whether the passenger called its dispatcher for service or hailed one of Pocono’s vehicles for service. Pocono is also unable to verify with its logs whether the alleged transportation took place and cannot respond to the complaint. Pocono is also unable to verify whether the alleged passenger paid by credit card and cannot respond to the complaint. Pocono alleges it is unable to respond to the complaint.

Without the time of the alleged transportation, the preliminary objections assert that it is impossible for Pocono to verify through its driver and dispatcher logs whether the alleged transportation occurred. Pocono alleges it is unable to respond to the complaint.

Without the origin and destination of the alleged transportation, the preliminary objections contend that it is impossible for Pocono to determine whether the alleged fare of $19.25 is accurate. Pocono alleges it is unable to respond to the complaint.

Without the identity of the driver, the preliminary objections allege that Pocono is unable to verify whether the driver performed the alleged transportation. Pocono alleges it is unable to respond to the complaint.

Without any information concerning the vehicle used to perform the alleged transportation, the preliminary objections allege that Pocono is unable to determine whether the vehicle was used in the alleged transportation. Pocono alleges it is unable to respond to the complaint.

The preliminary objections also contend that I&E’s complaint fails to join a necessary party by not naming the passenger as the complainant. The preliminary objections argue that the passenger who has first-hand knowledge of the alleged transportation is a necessary party to the proceeding. Pocono’s preliminary objections request that the Commission dismiss I&E’s complaint.

On April 6, 2015, I&E filed an answer to Pocono’s preliminary objections. Concerning the allegations in the preliminary objections that the complaint is insufficiently specific by failing to allege the name of the passenger who was overcharged, the answer admits that the complaint does not name the customer. Rather, the answer alleges that an I&E enforcement officer conducted an investigation which forms the basis of the information set forth in the complaint.

Concerning the allegations in the preliminary objections that the complaint is insufficiently specific by failing to allege the name of Pocono’s driver, the answer admits that the complaint does not name the driver. The answer points out that Pocono is charged with violating its tariff, not the individual driver.

The answer admits that the complaint does not identify the vehicle involved in the transaction. The answer denies that Pocono is unable to verify with its logs whether the alleged transportation took place because Pocono provided information on the transaction to the I&E enforcement officer in response to his request.

Concerning the allegations in the preliminary objections that the complaint fails to join a necessary party by not naming the passenger as the complainant, the answer points out that I&E conducted its own investigation and is the complainant, not the customer. The answer requests that the Commission dismiss the preliminary objections.

Pocono’s preliminary objections are ready for decision. For the reasons set forth below, I will deny the preliminary objections.

The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code §5.101(a) as follows:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

Here, Pocono’s preliminary objections assert that I&E’s complaint is insufficiently specific, pursuant to 52 Pa. Code §5.101(a)(3) and that I&E’s complaint fails to join a necessary party, pursuant to 52 Pa. Code § 5.101(a)(5). I will first address the preliminary objection asserting that I&E’s complaint is insufficiently specific.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C‑00935435 (July 18, 1994). The language contained in 52 Pa.Code §5.101(a)(3) is almost identical to the language in Pa. R.C.P. 1028(a)(3). The purpose of 52 Pa.Code §5.101(a)(3), like the purpose of Pa. R.C.P. 1028(a)(3), is to insure that an adverse party’s right and ability to answer and defend will not be unduly impaired by a pleader’s vagueness in stating the grounds of the complaint. Local No. 163, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of

America v. Watkins, 207 A.2d 776 (Pa. 1965); Foster v. Peat Marwick Main & Co., 587 A.2d 382 (Pa.Cmwlth. 1991); Paz v. Commonwealth, Dep’t. Of Corrections, 580 A.2d 452 (Pa.Cmwlth. 1990); Green Cab Company v. Hajducho, 50 Pa. PUC 745 (1977).

The pleader must disclose the material facts sufficient to enable the adverse party to prepare its case. The pleader should summarize the material facts essential to support its claim. The pleader should not allege evidence from which the material facts may be inferred. If the allegations in a complaint contain averments of all of the facts the complainant will need to prove in order to prevail and the allegations in the complaint are sufficiently specific so as to enable the respondent to prepare its defense, the allegations will withstand a preliminary objection challenging their specificity. Baker v. Rangos, 324 A.2d 498 (Pa.Super. 1974); Landau v. Western Pennsylvania National Bank, 282 A.2d 335 (Pa. 1971); Smith v. Wagner, 588 A.2d 1308 (Case 3) (Pa.Super.1991).

The contents required in a Commission formal complaint are set forth in the Commission’s Rules of Practice and Procedure at 52 Pa.Code §5.22. The regulation at 52 Pa.Code §5.22(a)(5) requires a clear and concise statement of the act or omission being complained of by the complainant. The recitation of the facts comprising the act or omission must be sufficiently specific to apprise the respondent of the claim and to permit the respondent to prepare an answer and present a defense or a preliminary objection pursuant to 52 Pa.Code §5.101(a)(3) may be sustained.

In this case, the complaint adequately informs Pocono and allows it prepare an answer and present a defense. The complaint alleges that on June 21, 2014, Pocono charged a passenger an improper rate of $25.00, which was more than the amount of $19.25 specified in Pocono’s tariff, violating 66 Pa.C.S. § 1303, 52 Pa.Code §§ 29.314(b)(6) and 29.316.

Given these circumstances, I&E’s complaint is sufficient to enable Pocono to prepare its case. The allegations in the complaint do not render the complaint so vague as to prevent Pocono from preparing a defense. The complaint alleges that Pocono violated Commission regulations on a particular date by charging an improper rate. If Pocono needs additional information concerning the passenger, driver and vehicle, it can acquire that information through discovery. The allegations in the complaint are sufficient to allow Pocono to prepare its case.

Having addressed the preliminary objection asserting that I&E’s complaint is insufficiently specific, I will now address the preliminary objection asserting that I&E’s complaint fails to join a necessary party, pursuant to 52 Pa. Code § 5.101(a)(5). As stated above, Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. The language contained in 52 Pa.Code §5.101(a)(5) is almost identical to the language in Pa. R.C.P. 1028(a)(5). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. Montague v. Philadelphia Gas Company, 66 Pa. PUC 24 (1988).

Both 52 Pa.Code §5.101(a)(5) and Pa. R.C.P. 1028(a)(5) allow a pleading to be dismissed for “nonjoinder of a necessary party”. A necessary party is one whose presence while not indispensable, is essential if the tribunal is to completely resolve a controversy and provide complete relief. Podolak v. Tobyhanna Twp. Bd. of Supervisors, 37 A.3d 1283 (Pa.Cmwlth. 2012).

In this case, Pocono alleges that I&E’s complaint fails to join a necessary party by not naming the passenger as a complainant. The preliminary objections argue that the passenger who has first-hand knowledge of the alleged transportation is a necessary party to the proceeding. In response, I&E points out that its complaint against Pocono alleges that Pocono violated Commission regulations and seeks a civil penalty.

While the passenger involved in the June 21, 2014 transportation may be a witness, the passenger is not necessary to resolve the controversy of whether Pocono violated the Commission’s regulations. The passenger is not necessary in order for the Commission to provide complete relief since I&E’s complaint only seeks a civil penalty. Pocono’s right to relief is not clearly warranted and free from doubt. Denying Pocono’s preliminary objections on this issue is appropriate under the circumstances. I will enter the following order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Pocono Cab Company, LLC at Docket No. C-2015-2428311 are denied.

2. That Pocono Cab Company, LLC shall file an answer to the compliant of the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement at Docket No. C-2015-2428311 within twenty days from the date of this order.

Date: September 30, 2015

David A. Salapa

Administrative Law Judge

**C-2015-2428311 – PENNSYLVANIA PUBLIC UTILITY COMMISSION BUREAU OF INVESTIGATION AND ENFORCEMENT v. POCONO CAB COMPANY LLC**HEIDI WUSHINSKE ESQUIREBI&E400 NORTH STREETPO BOX 3265HARRISBURG PA 17105-3265717-214-9594

***-ACCEPTS ELECTRONIC SERVICE-***CRAIG A DOLL ESQUIRE25 WEST SECOND STREETPO BOX 403HUMMELSTOWN PA 17036-0403717-566-9000*REPRESENTING POCONO CAB COMPANY, LLC*

***-ACCEPTS ELECTRONIC SERVICE-***