

James Jacobs
437 Kathleen Street ~ Pittsburgh, PA 15211 ~ (412) 708-0621
Savingsmax@yahoo.com

12/12/2016

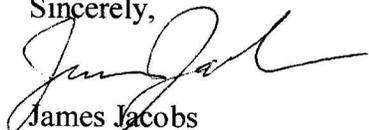
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
301 Fifth Avenue
Suite 220, Piatt Place
Pittsburgh, PA 15222
Attn: ALJ Conrad A. Johnson

RE: Docket# C-2016-2544673

Dear Judge Johnson,

Please accept the attached documents as Respondents Points For Consideration and Respondents Exhibits A, B and C for Docket# C-2016-2544673.

Sincerely,



James Jacobs
(412) 708-0621
Savingsmax@yahoo.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement,	
<i>Complainant,</i>	
v.	Docket No. C-2016-2544673
Sabine U. Jacobs and James J. Jacobs	
<i>Respondents</i>	

RESPONDENTS POINTS FOR CONSIDERATION

NOW comes the Respondents, Sabine U. Jacobs and James J. Jacobs, humbly submitting the following for the Courts careful consideration:

1. The practices and enforcement of the Commission must be consistent. Grossly disparate fines for the same alleged violations are NOT consistent and constitute unequal treatment under the law. Fines that are double and even quadruple that which is levied in other similar cases, for an alleged violation that relative to the other cases is supported by virtually no evidence, is even more egregious and violative of the requirement for equal treatment under the law. The following two paragraphs demonstrate how the Bureau of Investigation and Enforcement practiced such reprehensible disparity in two other cases as compared to the instant case.

2. Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. Mahmoud Mahmoud (Docket No. C-2015-2504481; 45 Pa.B. 7079 - Saturday, December 12, 2015) involves a Complaint alleging a violation 8 months earlier than the instant case:

2. That on September 17, 2015, Respondent quoted a price of \$20.00 to take PUC Enforcement Officer Christopher Urey from the North Shore, Pittsburgh, Pennsylvania to Lowes, Homestead, Pennsylvania, both in Allegheny County. Respondent does not hold a certificate of public convenience issued by this Commission.

3. *That Respondent, by holding out to provide transportation of persons between points in the Commonwealth of Pennsylvania for compensation while not having operating authority with this Commission, violated the Public Utility Code, 66 Pa.C.S. § 1101. **The penalty for this violation is \$500.00.***

Wherefore, the Bureau of Investigation and Enforcement Prosecutory Staff hereby requests that the Commission fine Mahmoud Mahmoud, Respondent, the sum of five hundred dollars (\$500.00) for the illegal activity described in this Complaint.

The fine assessed by the Bureau of Investigation and Enforcement in that case was **\$500** for the violation of ACTUALLY "holding out to provide transportation ... for compensation while not having operating authority".

The fine assessed by the Bureau of Investigation and Enforcement in the instant case is \$1000 for having a lighted sign that does NOT say "TAXI", nor does the sign say anything even remotely suggesting the offer of passenger service, but instead the sign that is alleged to be evidence of "holding out to provide transportation ... for compensation while not having operating authority" innocently displayed the words "GO PENS" in the midst of an historic and exciting Pittsburgh Penguins playoff run.

3. **Pennsylvania Public Utility Commission; Bureau of Investigation and Enforcement v. Raymond Whitaker** (Docket No. C-2016-2567125) involves a Complaint alleging a violation more than 4 months after the instant case:

2. *That on September 18, 2016, at 9:00 AM, a 2005 Buick sedan, bearing PA registration number JWZ2104, was observed at the The Westin Convention Center, 1000 Penn Avenue, Pittsburgh, Allegheny County, PA. Information from PennDOT indicates the vehicle is owned by the Respondent. The vehicle had a taxi dome light mounted on the roof, which clearly displayed the word "TAXI." See Appendix A and B.*

3. *That Respondent, by affixing a taxi dome light to the roof of the vehicle, violated 75 Pa. C.S. §4307. Dome lights are only permitted on vehicles operated by call and demand carriers or food delivery vehicles. **The penalty for this violation is \$250.***

WHEREFORE, the Bureau of Investigation and Enforcement Prosecutory Staff hereby request that the Commission fine Raymond Whitaker, the sum of

two hundred and fifty dollars (\$250) for the illegal activity described in this Complaint.

The fine assessed by the Bureau of Investigation and Enforcement in that case was **\$250** for the violation of having a dome light that ACTUALLY displayed the word "TAXI" while sitting at a major downtown hotel taxi stand, strongly establishing that the Respondent in that case was actually engaged in the "holding out to provide transportation ... for compensation while not having operating authority".

The fine assessed by the Bureau of Investigation and Enforcement in the instant case is **\$1000** for having a lighted sign that does NOT say "TAXI", nor does the sign say anything even remotely suggesting the offer of passenger service, but instead the sign that is alleged to be evidence of "holding out to provide transportation ... for compensation while not having operating authority" innocently displayed the words "GO PENS" in the midst of an historic and exciting Pittsburgh Penguins playoff run.

4. David W. Loucks (Chief, Motor Carrier Enforcement, Bureau of Investigation and Enforcement) was the signatory in the Complaints of both cases cited in paragraphs 2 and 3 above, and he is also the signatory in the Complaint in the instant case.

5. *"The touchstone of due process is protection of the individual against arbitrary action of the government."* Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 2975, 41 L. Ed. 935 (1974).

6. The Public Utility Commission is empowered to promulgate rules and regulations wherein they could at any time establish that a dome light on a vehicle constitutes prima facie evidence that the vehicle is "holding out to provide transportation ... for compensation while not having operating authority". The Commission has established no such standard, and accordingly no such standard should be presumed without such necessary legal authority.

7. Having a lighted sign on a vehicle is a violation of the Motor Vehicle Code (75 Pa. C.S. § 4307; 67 Pa. Code § 175.66(h), but it is nowhere established as a violation of the Public Utility Code.

8. The Bureau of Investigation and Enforcement failed in both their initial Complaint and in their Amended Complaint to cite the statutory authority upon which they acting to enforce the Motor Vehicle Code in this case.

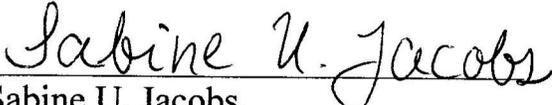
9. 52 Pa. Code § 29.402(1) establishes equipment requirements for a "common carrier or a contract carrier". It does not thereby establish the opposite, namely a prohibition of lighted signs on vehicles that are neither a "common carrier" nor "contract carrier".

10. The Bureau of Investigation and Enforcement is relying solely on a violation of the Motor Vehicle Code for which they have no enforcement authority to establish an alleged violation of the Public Utility Code for which they have no actual evidence.

VERIFICATION

We, Sabine U. Jacobs and James J. Jacobs, Respondents, do hereby verify that the statements made in this **RESPONDENTS POINTS FOR CONSIDERATION** are true and accurate to the best of our knowledge, information and belief. I understand that any false statements herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Respectfully Submitted,


Sabine U. Jacobs,
Respondent


James J. Jacobs,
Respondent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

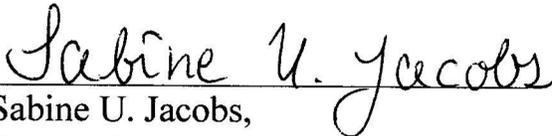
Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement,	
Complainant,	
v.	Docket No. C-2016-2544673
Sabine U. Jacobs and James J. Jacobs	
Respondents	

CERTIFICATE OF SERVICE

We, Sabine U. Jacobs and James J. Jacobs, Respondents, do hereby certify that a true and correct copy of the foregoing **RESPONDENTS POINTS FOR CONSIDERATION** was served via email on this 13TH day of December, 2016 to the following:

stwimer@pa.gov

Stephanie M. Wimer, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265


Sabine U. Jacobs,
Respondent


James J. Jacobs,
Respondent

GENERAL AFFIDAVIT

Commonwealth of Pennsylvania
County of Allegheny

C-2016-2544673
Respondents Exhibit A

BEFORE ME, the undersigned Notary, PATRICIA MORONEY,
on this 12th day of December, 2016, personally appeared **James J. Jacobs**, who currently resides in Allegheny County at **437 Kathleen Street, Pittsburgh, Pennsylvania 15211**, who being by me first duly sworn, under oath deposes that the following matters and facts are true and correct to the best of his knowledge:

Neither I, James J. Jacobs, nor my wife, Sabine U Jacobs, were at any time involved in the *"holding out to provide passenger service between points in Pennsylvania while not having operating authority"* as alleged by the Public Utility Commission Bureau of Investigation and Enforcement under Docket No. C-2016-2544673.

On the night in question, it is true that I operated the vehicle (JPZ 9740 referenced in the Complaint) while having a "GO PENS" dome light on the roof of the vehicle, apparently in an unbeknownst violation of Pennsylvania Motor Vehicle Code (75 Pa. C.S. § 4307). The purpose of the light was in celebration of the ongoing playoff success of the Pittsburgh Penguins who the night before had rallied to win in overtime to take a 3 games to 1 advantage in the second round best of 7 series against the very strong Washington Capitals team. Later that night of May 7, 2016, the Penguins would be playing the potential series clinching game against the favored Washington Capitals. In the midst of the city-wide playoff excitement, I had the opportunity to purchase some Penguins Jerseys and T-shirts at wholesale and then to resell them at near retail during this time when such merchandise was understandably a very hot commodity. I was on Carson Street in the southside on the night referenced in the Complaint (Friday May 6th into early Saturday May 7th) strictly for the purpose of celebrating the historic nature of

ongoing playoff success of the Pittsburgh Penguins and for selling the Pittsburgh Penguins merchandise. The dome light was solely intended to attract customers for that purpose and to celebrate the Penguins playoff success.

The alleged "holding out to provide passenger service" was never even contemplated, nor was it undertaken.

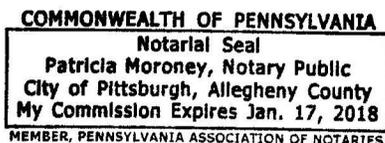


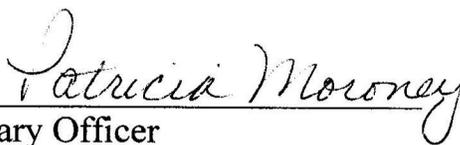
James J. Jacobs, Affiant
437 Kathleen Street
Pittsburgh, PA 15211

Commonwealth of Pennsylvania
County of Allegheny

On this, the 12th day of December, 2016, before me, the undersigned notary public officer, Patricia Moroney, personally appeared **James J. Jacobs**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Affidavit instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seals.





Notary Officer

My Commission expires: January 17, 2018

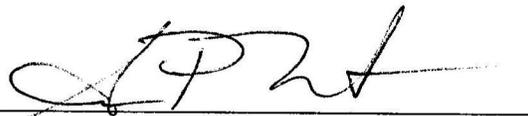
GENERAL AFFIDAVIT

**Commonwealth of Pennsylvania
County of Allegheny**

**C-2016-2544673
Respondents Exhibit B**

BEFORE ME, the undersigned Notary, PATRICIA MORONEY,
on this 12th day of December, 2016, personally appeared **Sean Neate**,
who currently resides in Allegheny County at **1511 Westfield Street Apt 2,
Pittsburgh, Pennsylvania 15216**, who being by me first duly sworn, under oath
deposes that the following matters and facts are true and correct to the best of his
knowledge:

I was on Carson Street in the early morning of May 7,
2016 from midnight until around 2:30 in the morning. I
was with James Jacobs during that entire time period as
he sold Pittsburgh Penguins merchandise near the corner
of 19th and Carson Streets.

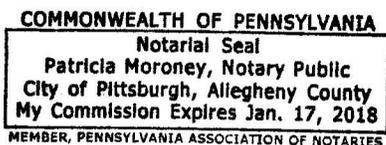


**Sean Neate, Affiant
1511 Westfield Street
Pittsburgh, PA 15216**

**Commonwealth of Pennsylvania
County of Allegheny**

On this, the 12th day of December, 2016, before me, the undersigned
notary public officer, PATRICIA MORONEY,
personally appeared **Sean Neate**, known to me (or satisfactorily proven) to be the
person whose name is subscribed to the within Affidavit instrument, and
acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seals.



Patricia Moroney
Notary Officer

My Commission expires: January 17, 2018



GO PENS

C-2016-2544673
Respondents Exhibit C



C-2016-2544673
Respondents Exhibit C



C-2016-2544673
Respondents Exhibit C