

PLEASE DOCKET

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
MAR 10 2004

Janet L. Moore

v.

Docket No. C-20030124

Capital City Cab Service, Inc.

**DOCUMENT
FOLDER**

ORDER DENYING LETTER-REQUEST FOR ISSUANCE OF SUBPOENA

By hand delivered letter dated February 10, 2004, the Respondent, Capital City Cab Service, Inc., seeks a subpoena for Donald Hodges, who is alleged to be a mechanic who worked on the taxicab in question on the day of the incident that forms the basis of this complaint (a copy of the letter is attached to this order). The letter contains a "cc" notation that indicates that it was sent to Janet Moore, the complainant. The subpoena seeks to compel Mr. Hodges' appearance at the hearing scheduled for February 18, 2004. The request for subpoena will be denied because it fails to comply with the Commission's rules in several respects, and at least one aspect of non-compliance cannot be cured before the scheduled hearing.

The Commission's rule pertaining to issuance of subpoenas reads as follows:

5.421. Subpoenas.

(a) *Issuance.* A subpoena for the attendance of witnesses or for the production of documentary evidence, unless directed by the Commission upon its own motion, will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena. The written application shall specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to

RJP

documentary evidence, specification as nearly as possible of the documents desired and the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents. The proposed subpoena may be attached to the application.

(b) *Notice* An application for a subpoena shall be filed with the Commission and copies served by the petitioner upon the affected participant, the presiding officer, active participants of record, and if the subpoena is directed to a Commission employe, to the Commission's Law Bureau. The application shall contain a notice that an answer or objection thereto shall be filed with the Commission and presiding officer within 10 days of service of the application. When the person for whom a subpoena is sought is not a participant to the case, a copy of the subpoena application shall be served on the person. When the person for whom a subpoena is sought is not a party to the case, the application shall identify the persons—names and addresses—including the Secretary and presiding officer, to whom the answer or objection shall be sent.

(c) *Service and return.*

(1) *Personal service.* If service of the subpoena is made by a sheriff, like officer or deputy, service shall be evidenced by the return thereof. If made by another person, the person shall make affidavit thereof, describing the manner in which service was made, and shall return the affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit or statement, shall be returned to the Secretary, or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(2) *Service by mail.* Service of a subpoena upon a participant may also be accomplished by mail under § § 1.54 and 1.55 (relating to service by a participant; and service on attorneys), or by a form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the participant or the persons referred to in Pa.R.C.P. No. 402(a)(2).

(d) *Fees of witnesses.* A witness subpoenaed by the Commission shall be paid the same fees and mileage as are paid for the like services in the courts of common pleas. A witness subpoenaed by a participant shall be paid the same fees by the participant. The

Commission, before issuing a subpoena as provided in this section may require a deposit of an amount adequate to cover the fees and mileage involved.

(e) *Supersession*. Subsections (a)—(d) supersede I Pa. Code § 35.142 (relating to subpoenas).

52 Pa. Code §5.421.

Capital City Cab's request for a subpoena fails to comply with this regulation in the following respects (I am overlooking the fact that it is in the form of a letter rather than an application):

1. Although it was hand delivered to me, there is no indication that it was filed with the Commission as required by 52 Pa. Code §5.421(b).
2. Although it appears that a copy was sent to Ms. Moore, there is no indication that it was served upon Mr. Hodges, a non-party, as required 52 Pa. Code §5.421(b).
3. The letter-request does not contain a notice advising the parties and the target of the subpoena that an objection may be filed within 10 days, as required 52 Pa. Code §5.421(b). Since Mr. Hodges is not a party, the notice should also have stated where an objection could be filed. Since there was no notice, this requirement is also not met.
4. Lastly, the letter-request was not made in sufficient time to allow objections to be filed before the scheduled hearing.

Obviously, the last defect cannot be cured without rescheduling the hearing.

The parties were notified of the hearing on February 18, 2004 by letter dated January 12, 2004. Capital City Cab had plenty of time to seek and obtain the requested subpoena in accordance with the Commission's rule. Moreover, before the first hearing in this matter (on September 16, 2003), on July 3, 2003, I sent to the parties a prehearing order in which I discussed the process for obtaining a subpoena:

6. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa. Code §5.421. You must submit your written application to me sufficiently in advance of the hearing date so the other parties will have the required ten (10) days' notice to answer or object, and so you will have enough time to receive the subpoena and serve it.


Considering all of the foregoing, justice and fairness requires that Capital City Cab's untimely request for a subpoena be denied.

ORDER

THEREFORE, IT IS ORDERED:

That the letter-request for a subpoena hand delivered to me on February 10, 2004, by Capital City Cab Service, Inc. is DENIED.

Date: February 10, 2004



MICHAEL C. SCHNIERLE
Administrative Law Judge

PINSKEY & FOSTER
ATTORNEYS AT LAW

121 SOUTH STREET
HARRISBURG, PENNSYLVANIA 17101

RALPH B. PINSKEY
PETER B. FOSTER

TELEPHONE: (717) 234-9321
FAX: (717) 234-7832
E-mail: RBPinskey@aol.com

February 10, 2004
HAND-DELIVERED

The Honorable Michael C. Schnierle
Administrative Law Judge
P.U.C.
Office of Administrative Law Judge
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Janet L. Moore v. Capital City
Cab Service, Inc.; No. C-20030124

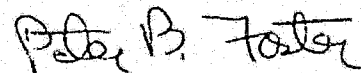
Dear Judge Schnierle,

As you know, you have scheduled a Hearing in this matter for February 18, 2004 at 10:00 A.M. in Hearing Room #2 of the Commonwealth Keystone Building. I represent Capital City Cab Service, Inc. By this letter, I am respectfully requesting that you issue a subpoena for:

Donald Hodges
1100 Market Street
Lemoyne, PA 17043

Mr. Hodges would be a witness for Capital City Cab Service, Inc. He is a mechanic who would testify that the cab in question was out of service on the day in question.

Very truly yours,



Peter B. Foster

cc: Janet L. Moore

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-20030124		YES	NO
Case Name:	Janet L Moore v. Capital City Cab Service, Inc	Prehearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	HBG	Further Hearing Needed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Date:	February 18, 2004	Estimated Add'l Days:		
ALJ:	Michae C. Schrierle	RECORD CLOSED:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	DATE:	3/5/04	
		Briefs to be Filed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		REMARKS:		

**DOCUMENT
FOLDER**

RECEIVED

FEB 20 2004

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
PATRA B. FOSTER, ESQ. 717 234-9321	121 SOUTH ST. HARRISBURG, PA 17101 <small>City State Zip</small>	CAPITAL CITY CAB SERVICE INC
Telephone:	E-mail Address:	Fax Number:
Janet L. Moore	113 Minnesota Street <small>City State Zip</small> Winfield KS 67156	Pro Se
Telephone: 620-221-9103	E-mail Address:	Fax Number:
	<small>City State Zip</small>	
Telephone:	E-mail Address:	Fax Number: RJF

Check this box if additional parties or attendees appear on back of form.

Terri Treuitt
Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
September 13, 2004

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-20030124

(SEE LETTER DATED 1/12/04)

Janet L. Moore v. Capital City Cab Service, Inc.

Service Dispute

Judge Change Notice

This is to inform you that the Administrative Law Judge in the above captioned case has been changed from Administrative Law Judge Michael C. Schnierle to Administrative Law Judge Angela T. Jones.

Please change your records accordingly.

DOCUMENT
FOLDER

pc: Judge Jones
Cherie Pyle
Beth Plantz
Docket Section
Calendar File

DOCKETED
OCT 07 2004

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC COMMISSION

JANET L. MOORE,

v.

CAPITAL CITY CAB,
SERVICE, INC.

: In re:
: C-20030124
:
:
:

DOCUMENT
FOLDER

ORDER

AND NOW, this day of November, 2003, upon consideration of Respondent Capital City Cab Service, Inc., Petition for Access to and to Copy Enforcement Officer Kurt Kauffman's Investigate Report, it is hereby ordered that said Petition is granted and Respondent is permitted to have access to and to copy Officer Kauffman's Investigative Report in this matter maintained by this Bureau of Transportation and Safety.

By the Commissioners:

Commissioner

SECRETARY'S BUREAU
PA PUC

2003 NOV 21 PM 1:33

RECEIVED

143