

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation & Enforcement

v.

Charles H. Edwards, Jr.

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C-2016-2537014

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

A formal complaint by the Bureau of Investigation and Enforcement against an individual is dismissed. There is insufficient evidence to conclude that the individual was rendering unauthorized passenger service.

**PROCEDURAL HISTORY**

On April 26, 2016, the Commission’s Bureau of Investigation and Enforcement (BIE) served a formal complaint on Charles H. Edwards, Jr. (Respondent), which alleged a Public Utility Commission (PUC) enforcement officer observed a vehicle owned by Mr. Edwards on March 24, 2016, operating on Carson Street in Pittsburgh with a dome light mounted to the roof of the vehicle. The complaint stated that Mr. Edwards was in violation of 52 Pa.Code § 29.314(d) because dome lights are only permitted for call and demand carriers. The complaint further charged that Mr. Edwards violated Section 1101 of the Public Utility Code<sup>1</sup> by “holding

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<sup>1</sup> 66 Pa.C.S. § 1101.

out to provide passenger service” without the proper operating authority from the Commission. As a consequence, BIE requested a civil penalty in the amount of \$1,000 and requested that Mr. Edwards’ vehicle registration be suspended by the Department of Transportation. On May 19, 2016, BIE served a corrected complaint which corrected the model year of Mr. Edwards’ vehicle.

In a letter received by the Commission on June 6, 2016, Mr. Edwards admitted that he had purchased a light on Amazon.com and apologized for violating Section 29.314(d).

By hearing notice dated November 18, 2016, this complaint was scheduled for a hearing on Thursday, January 12, 2017, and assigned to me. On November 21, 2016, I issued a prehearing order which set forth the procedural standards for the conduct of the hearing. The hearing convened as scheduled. BIE appeared and was represented by Kourtney Myers, Esquire and Stephanie M. Wimer, Esquire. BIE presented the testimony of PUC Enforcement Officer Ryan Balestra and offered four exhibits which were admitted into evidence. Mr. Edwards did not appear.

Following the receipt of the transcript, a briefing order was issued. At the conclusion of the period for the filing of briefs, the record was closed by interim order dated March 28, 2017.

#### FINDINGS OF FACT

1. The Complainant in this matter is the Commission’s Bureau of Investigation and Enforcement. (N.T. 4.)
2. The Respondent is Charles H. Edwards, Jr. (N.T. 4)
3. The Commission has not issued a certificate of public convenience to Respondent to operate as a motor carrier of passengers. (N.T. 8; BIE Ex. 1)

4. PUC Enforcement Officer Ryan Balestra observed a tan 2003 Hyundai Santa Fe with plate number JVJ3490 on March 24, 2016, on Carson Street in the city of Pittsburgh. (N.T. 10; BIE Ex. 3)

5. Officer Balestra observed that the tan 2003 Hyundai Santa Fe had an illuminated dome light affixed to the roof. (N.T. 8; BIE Ex. 2)

6. The Respondent owns a tan 2003 Hyundai Santa Fe with Pennsylvania license plate number JVJ3490. (N.T. 11,16)

7. There is no evidence that the dome light had the word “taxi” printed on it. (See BIE Ex. 2)

### DISCUSSION

The Commission is empowered and charged with the duty to enforce the requirements of the Public Utility Code.<sup>2</sup> The Commission delegated authority to BIE to initiate prosecutions.<sup>3</sup> As the proponent of a rule or order, BIE bears the burden of proof pursuant to Section 332(a) of the Code.<sup>4</sup> To establish a sufficient case and satisfy the burden of proof, BIE must show that the Respondent is responsible for the violation described in the Complaint<sup>5</sup> and that the penalty requested reasonably fits the violation.<sup>6</sup> Such a showing must be by a preponderance of the evidence.<sup>7</sup> That is, BIE’s evidence must be more convincing, by even the

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<sup>2</sup> 66 Pa.C.S. § 501(a).

<sup>3</sup> *Implementation of Act 129 of 2008*, Docket M-2008-2071852 (Final Procedural Order entered August 11, 2011).

<sup>4</sup> 66 Pa.C.S. § 332(a); *Public Utility Comm’n v. Yellow Cab Company of Pittsburgh*, Docket No. C-2012-2249031 (Opinion and Order entered February 6, 2014).

<sup>5</sup> *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990).

<sup>6</sup> *Eureka Stone Quarry, Inc. v. Department of Env’tl. Prot’n*, 957 A.2d 337 (Pa.Cmwlth. 2008).

<sup>7</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

smallest amount, than that presented by the Respondent.<sup>8</sup> Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>9</sup>

BIE charged the Respondent with violating Section 1101 of the Public Utility Code by “holding out to provide passenger service between points in Pennsylvania while not having operating authority with this Commission.”<sup>10</sup> BIE argues that the presence of an illuminated dome light affixed to the roof of a car which was registered to the Respondent is sufficient evidence to prove the Respondent’s intent to provide transportation service.

The Commission has held that “indiscriminate holding out to the general public” as a common carrier is a violation of the Public Utility Code.<sup>11</sup> A “common carrier” is a person or corporation “holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers . . .”<sup>12</sup> Therefore, the actual provision of transportation services is not required in order for the Commission to determine that a person without a certificate of public convenience is violating Section 1101 of the Public Utility Code.<sup>13</sup>

BIE points to two recent cases where the Commission determined that a respondent was in violation of the Public Utility Code for holding out as a common carrier without a certificate of public convenience, even though the enforcement officers did not witness the transportation of passengers. In *Public Utility Commission v. Steven A. Cintron/La Familia*,

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<sup>8</sup> *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>9</sup> *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

<sup>10</sup> BIE Corrected Complaint ¶ 4.

<sup>11</sup> *E.g., Application of Moselle Morris*, Docket No. A-2009-2098317 (Final Order entered December 3, 2009).

<sup>12</sup> *See also Commonwealth v. Babb*, 70 A.2d 660 (Pa.Super. 1950).

<sup>13</sup> 66 Pa.C.S. § 1101.

*Inc.*<sup>14</sup> the respondent was advertising transportation services on Craigslist. The Commission held that BIE had sustained its burden of proving the violation and assessed a civil penalty of \$1,000. Similarly in *Public Utility Commission v. Daniel and Darlene Applegate t/a Independent Security Cab*,<sup>15</sup> the respondent had information printed on the side of its vehicle which advertised transportation services and also had printed business cards which advertised its services. The Commission held that BIE had sustained its burden of proving the violation and assessed a civil penalty of \$1,000.

The only evidence in this case is the presence of a dome light on a vehicle registered to the Respondent. The Respondent, in his letter answer to BIE's complaint admits that he purchased the dome light on Amazon.com so that he can "pay his bills." The letter does not admit that he was using the light on the night he was observed by Officer Balestra. Nor does it admit that he was using the light to advertise transportation service to the public.

BIE argues that the letter means that the Respondent admitted that he "anticipated to receive compensation for providing uncertificated passenger transportation service."<sup>16</sup> Yet, the Respondent could have been using the light on the roof of his vehicle to advertise any number of commercial enterprises. Indeed, Officer Balestra testified that vehicles used for food delivery are permitted by the Department of Transportation to have roof lights.<sup>17</sup> Speculation cannot form the basis of a factual conclusion.<sup>18</sup>

The Commonwealth Court's decision in *Monaci v. State Horse Racing Commission*,<sup>19</sup> explains the level of evidence required to prove a regulatory violation. The Racing Commission had permanently revoked a trainer's license and assessed a civil penalty in

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<sup>14</sup> Docket C-2015-2473286 (Final Order entered February 1, 2016).

<sup>15</sup> Docket C-2015-2451749 (Final Order entered May 23, 2016).

<sup>16</sup> BIE Main Brief at 9.

<sup>17</sup> N.T. 18.

<sup>18</sup> *Artic Cat Sales, Inc. v. State Bd. Of Vehicle Mfrs.*, 110 A.3d 242 (Pa.Cmwlth. 2015).

<sup>19</sup> 717 A.2d 612 (Pa.Cmwlth. 1998).

connection with a failed drug test of the trainer's horse and subsequent investigation. The trainer, Monaci, appealed the revocation because the Racing Commission relied on the existence of a relationship between Monaci and another trainer who was found guilty of stealing the urine sample of Monaci's horse. The Commission concluded that because of the relationship between Monaci and the other trainer and the fact that Monaci was the only person who stood to benefit from the theft of the sample, Monaci was guilty of "the appearance of impropriety in the theft . . ." which justified the permanent revocation of his trainer's license.

The Commonwealth Court reversed. The court held that circumstantial evidence may be used to prove a fact. However,

[i]n relying on upon circumstantial evidence to reasonably infer a factual conclusion, "the evidence must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion so as to outweigh . . . any other evidence and reasonable inferences therefrom which are inconsistent therewith."<sup>20</sup>

The court further noted that a party is "not entitled to an inference of fact which amounts to nothing more than a guess or conjecture."<sup>21</sup> The circumstantial evidence relied on by the Racing Commission only proved that the other trainer wanted to help Monaci. It did not establish that Monaci instigated, encouraged or acquiesced in the theft. Therefore, according to the Commonwealth Court, the Racing Commission could not properly conclude that Monaci was involved.

Similarly, BIE's interpretation of the Respondent's letter cannot form the basis from which to infer Respondent was advertising transportation service. The only evidence proffered by BIE is Officer Balestra's testimony that he saw a vehicle with a dome light on the roof on March 24, 2016.<sup>22</sup> There is no evidence that he witnessed the Respondent responding to

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<sup>20</sup> 717 A.2d at 618 (quoting *Flagiello v. Crilly*, 187 A.2d 289, 290 (Pa. 1963)).

<sup>21</sup> 717 A.2d at 618, n.19.

<sup>22</sup> Q. ... So your belief that he was offering passenger transportation was based solely on the presence of the light on top of the truck?

a hail or otherwise transporting passengers.<sup>23</sup> Unlike *Cintron* and *Applegate*, there is no evidence that the Respondent was advertising taxi services either online, with business cards, or with printing on the vehicle. Although BIE's complaint states that the dome light had the word 'taxi' on it, Officer Balestra did not describe the light as having writing on it, nor is any writing shown in the officer's photographs. BIE's characterization of the meaning of Respondent's letter is based on speculation and is not sufficient to establish that he was holding himself out as a taxi service on March 24, 2016. The most that the letter demonstrates is that Respondent owned a dome light that he purchased on Amazon.com. Any inference about his intent is speculative. In short, there is insufficient evidence in this record to conclude that the Respondent violated Section 1101 of the Public Utility Code.

#### Violation of 29.314(d)

The complaint of BIE also alleges that by attaching a dome light to the roof of the vehicle, the Respondent has violated Section 29.314(d). Respondent admitted that he purchased a dome light from Amazon.com.

Section 29.314, describes the vehicle and equipment requirements for call or demand carriers. Subsection (d) requires call or demand carriers to have a dome light affixed to the roof of the vehicle:

d) *Dome lights.* Unless otherwise permitted by the Commission, vehicles operated by call and demand carriers must have a dome light affixed to the roof of the vehicle. The dome light shall be visible from a distance of 100 feet from the front and rear of the vehicle. The dome light shall be illuminated only when a customer does not occupy the vehicle.

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A. Correct.  
N.T. 17.

<sup>23</sup> Commission policy wisely prohibits transportation enforcement officers from approaching a vehicle suspected of offering unauthorized transportation service without the presence of a Pittsburgh police officer.  
N.T. 17.

BIE explains in its brief that the purpose of the requirement is to aid the public in identifying taxicabs available for service.<sup>24</sup>

This section does not apply to the facts presented here. BIE's position is that the Respondent was operating as a taxi without certification. If the Respondent is not a taxicab, he cannot be in violation of a regulation which only applies to taxis.

BIE also argues that Department of Transportation regulations preclude a vehicle which is not operating as a taxi or a food truck to have a dome light affixed to the roof. BIE then relies on Section 29.402(1) of the Commission's regulations which mandates that a common carrier comply with certain Department of Transportation regulations.<sup>25</sup>

First, BIE did not provide notice in its complaint that the Respondent was in violation of a Department of Transportation regulation. Due process applies to administrative proceedings just as it applies in judicial proceedings. It is a fundamental element of due process that an individual be informed of the nature of the charge against him, particularly in an enforcement proceeding where BIE is requesting the maximum penalty that the law permits.<sup>26</sup> Therefore, it is not appropriate to bootstrap this argument for the first time at hearing.

Second, like Section 29.314, Section 29.402 only applies to certificated transportation providers. Respondent may well be in violation of the Department of Transportation's regulations, but BIE has cited no authority which grants the Commission

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<sup>24</sup> *In Re Final Rulemaking Amending 52 Pa.Code Chapters 29 & 31*, Docket No. L-00020157 (Order entered August 16, 2005).

<sup>25</sup> Section 29.402(1) provides:  
A common carrier or a contract carrier may not permit a vehicle having a seating capacity of 15 passengers or less, including the driver, to be operated unless it complies with the following requirements:  
(1) Vehicles must comply with applicable Department of Transportation equipment inspection standards as set forth in 67 Pa. Code Chapter 175 (relating to vehicle equipment and inspection) at all times when the vehicle is being operated.

<sup>26</sup> *Armour Transp. Co. v. Pa. Pub. Util. Comm'n*, 10 A.2d 86 (Pa.Super. Ct. 1939); *Public Utility Commission v. Wassil*, WESTLAW 141083 (Pub. Util. Comm'n 1980). *See also Pocono Water Co. v. Pa. Pub. Util. Comm'n*, 630 A.2d 971 (Pa.Cmwlth. Ct. 1993).

independent authority to enforce the Department of Transportation's regulations. Therefore, an alleged violation of Department of Transportation regulations alone, cannot form the basis for a violation of the Commission's regulations and the Commission has no authority to assess a penalty for a violation of Department of Transportation regulations.

### Conclusion

In conclusion, BIE failed to carry its burden of proving that Respondent was offering transportation without certification on May 24, 2016. BIE also failed to demonstrate that the Commission has authority to assess a penalty for the violation of regulations that apply to certificated carriers. Therefore, the complaint is dismissed.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Commission has the power and the duty to enforce the requirements of the Public Utility Code. 66 Pa.C.S. § 501.
3. The Bureau of Investigation and Enforcement bears the burden of proof. 66 Pa.C.S. § 332.
4. In administrative as well as judicial proceedings, it is a fundamental element of due process that an individual be informed of the nature of the charge against him. *Armour Transp. Co. v. Pa. Pub. Util. Comm'n*, 10 A.2d 86 (Pa.Super. Ct. 1939). *See also Pocono Water Co. v. Pa. Pub. Util. Comm'n*, 630 A.2d 971 (Pa.Cmwlth. Ct. 1993).
5. The Commission has no independent authority to enforce the regulations of the Pennsylvania Department of Transportation.

