



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

June 26, 2017

VIA ELECTRONIC FILING

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. Charles H. Edwards, Jr.
Docket No. C-2016-2537014
I&E Exceptions

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Exceptions of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Stephanie M. Wimer
Prosecutor
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Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: RA-OSA@pa.gov
Honorable Mary D. Long
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	
Commission, Bureau of Investigation	:	
and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2016-2537014
	:	
Charles H. Edwards, Jr.,	:	
Respondent	:	

EXCEPTIONS OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT

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Dated: June 26, 2017

TABLE OF CONTENTS

TABLE OF CITATIONS	ii
I. INTRODUCTION	1
A. Background	1
B. Scope of Review	5
II. I&E EXCEPTIONS	6
A. I&E EXEPTION NO. 1: The ALJ Erred In Finding That There Is Insufficient Evidence To Conclude That Respondent Was Holding Out To Provide Unauthorized Passenger Service When Respondent Admitted To It.....	6
B. I&E EXEPTION NO. 2: The ALJ Erred In Orally Denying I&E’s Motion For Judgement On The Pleadings	9
C. I&E EXEPTION NO. 3: The ALJ Erred In Finding That The Commission Has No Independent Authority To Enforce The Department Of Transportation’s Regulations.....	11
III. CONCLUSION	17

TABLE OF CITATIONS

Cases

<i>City of Philadelphia v. Pa. Pub. Util. Comm'n</i> , 458 A.2d 1026 (Pa. Cmwlth. 1983).....	5
<i>Commonwealth of Pa. v. Doranzo</i> , 529 A.2d 6, 8 (Pa. Super. 1987)	6
<i>CRL of Maryland v. Workmen's Comp. Appeal Bd. (Hopkins, Wellsboro Cemetery Assoc., and Donegal Mutual Ins. Co.)</i> , 627 A.2d 1238, 1243 (Pa. Cmwlth. 1993).....	7, 8
<i>Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n</i> , 817 A.2d 593 (Pa. Cmwlth. 2003), <i>petition for allowance of appeal denied</i> , 836 A.2d 123 (Pa. 2003)	9, 10
<i>G.G. & C. Bus Co. v. Pa. Pub. Util. Comm'n</i> , 400 A.2d 941, 944 (Pa. Cmwlth 1979)	5
<i>Harrisburg Taxicab & Baggage Company t/a Yellow Cab v. Pa. Pub. Util. Comm'n</i> , 786 A.2d 288 (Pa. Cmwlth. 2001)	12
<i>Logue v. Gallagher</i> , 3 A.2d 191 (Pa. Super. 1938).....	7
<i>Monaci v. State Horse Racing Commission</i> , 717 A.2d 612 (Pa. Cmwlth. 1998)	8
<i>Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n</i> , 578 A.2d 600 (Pa. Cmwlth. 1990), <i>alloc. denied</i> , 602 A.2d 863 (Pa. 1992)	6
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.2d 854 (Pa. 1950).....	6
<i>Williams v. Lewis</i> , 466 A.2d 682, 683 (Pa. Super. Ct. 1983).....	9

Statutes

66 Pa. C.S. § 307	12
66 Pa. C.S. § 332(a).....	6
66 Pa. C.S. § 335(a).....	5
66 Pa. C.S. § 1101	2, 3, 9
75 Pa. C.S. §§ 101, <i>et seq.</i>	14
75 Pa. C.S. § 1619	14
75 Pa. C.S. § 4102	13

75 Pa. C.S. § 4571(c.1).....	14
75 Pa. C.S. § 4704(a)(2).....	13
75 Pa. C.S. § 4704(h)	13
75 Pa. C.S. § 6117	14

Rules and Regulations

52 Pa. Code § 5.92	15
52 Pa. Code § 5.102(a)	9
52 Pa. Code § 5.102(d)(3)	10
52 Pa. Code § 29.314(d).....	Passim
52 Pa. Code § 29.402	4
52 Pa. Code § 29.402(1).....	11, 12
52 Pa. Code § 29.406	12
52 Pa. Code § 29.406(c)	13
52 Pa. Code § 69.1201(c)(6)	4
67 Pa. Code § 175.66(h).....	Passim
67 Pa. Code §§ 229.1 <i>et seq</i>	13
67 Pa. Code §§ 231.1 <i>et seq</i>	13

I. INTRODUCTION

A. BACKGROUND

The Initial Decision (“I.D.”) of the presiding Administrative Law Judge (“ALJ”) dismisses the Bureau of Investigation and Enforcement’s (“I&E”) formal Complaint for a lack of sufficient evidence to conclude that the individual was holding out to provide unauthorized passenger transportation service¹ when the individual admitted to the violation.² I&E disagrees and respectfully files these Exceptions to the I.D. requesting that the Commission reverse the decision.

I&E initiated the instant complaint proceeding at the Pennsylvania Public Utility Commission (“Commission”) against Charles H. Edwards, Jr. (“Respondent”) after he was observed by I&E Motor Carrier Enforcement Officer Ryan Balestra (“Officer Balestra”) operating his personal vehicle with an illuminated taxi dome light affixed to the roof on March 26, 2016.³ Respondent was seen around 10:40 PM driving on Carson Street in the Southside neighborhood of Pittsburgh.⁴ Carson Street was “packed,” with many people in the street and in bars and restaurants.⁵ Officer Balestra photographed the vehicle, researched the license plate and determined that Respondent lacked a Certificate of Public Convenience to operate as a passenger motor carrier.⁶

Officer Balestra testified that his supervisor made him aware that unauthorized passenger motor carrier activity on Carson Street in the Southside neighborhood of

¹ I.D. at 1.

² See Answer to I&E’s Complaint.

³ N.T. at 8.

⁴ N.T. at 10.

⁵ N.T. at 11.

⁶ N.T. at 8-9, 12-13, 16; I&E Exhibit Nos. 1-3.

Pittsburgh is an activity in which the I&E motor carrier enforcement officers are supposed to watch.⁷ He stated that vehicles operating with dome lights in Pittsburgh are a problem that his office is trying to enforce and that “for every one that we catch, there’s ten out there that we don’t.”⁸ Officer Balestra further testified that pursuant to his office’s policy, he did not stop Respondent’s car because he lacked police escort.⁹

Officer Balestra’s observations and photographs formed the basis of I&E’s formal Complaint that was initially filed on April 26, 2016.¹⁰ I&E’s Complaint alleged that Respondent violated Section 1101 of the Public Utility Code (“Code”), 66 Pa.C.S. § 1101, for holding out to provide passenger transportation service between points in Pennsylvania for compensation without first obtaining authority from the Commission, and Section 29.314(d) of the Commission’s regulations, 52 Pa. Code § 29.314(d), by affixing a taxi dome light to the roof of his vehicle when dome lights are only permitted on call and demand motor carriers. The Complaint requests a \$1,000 civil penalty and suspension of Respondent’s vehicle registration by the Pennsylvania Department of Transportation (“PennDOT”).

In direct response to the allegations in I&E’s Complaint, Respondent filed an Answer on June 6, 2016 that stated, in pertinent part, the following:

I’m really not good with writing my words on paper, but it’s [sic] seem [sic] like I owe you an apologize [sic] for violating 52 Pa. Code § 29.314(d). I use [sic] to driving [sic] for yellow cab and when things slow [sic] down I still [sic] bills to pay. So I stopped working for yellow

⁷ N.T. at 10.

⁸ N.T. at 18.

⁹ N.T. at 17.

¹⁰ An Amended Complaint was filed on May 18, 2016 that corrected the model year of Respondent’s vehicle from 2013 to 2003.

cab and had to decide of another way to pay my bills. **So I went on Amazon and bought a taxi sign so I can keep on paying these bills.** I may have to go back to yellow cab.

(emphasis added).

Given Respondent's clear admission of guilt and the absence of material facts in dispute, I&E filed a Motion for Judgment on the Pleadings on December 8, 2016.

Respondent did not answer I&E's Motion for Judgment on the Pleadings and the presiding ALJ did not issue a written ruling on the Motion.

An Initial Hearing was held in Pittsburgh on January 12, 2017. Respondent did not appear. The presiding ALJ orally denied I&E's Motion for Judgment on the Pleadings, stating that "I don't think that you can say that there are no genuine issues of material fact in dispute."¹¹ No further elaboration was provided.

I&E proceeded to present the uncontested testimony of Officer Balestra and proffered four exhibits into evidence. One of the exhibits, I&E Exhibit No. 4, is another formal Complaint filed by I&E, docketed at C-2016-2544672, which alleges that Respondent again violated Section 1101 of the Code, 66 Pa.C.S. § 1101, by holding himself out to transport passengers as a motor carrier without first obtaining a Certificate of Public Convenience at the Commission, and Section 29.314(d) of the Commission's regulations, 52 Pa. Code § 29.314(d), by affixing a taxi dome light to the roof of Respondent's vehicle. The Complaint alleges that Officer Balestra observed Respondent operating with a taxi dome light six weeks later, at 10:57 PM on May 6, 2016 on Carson Street in the same vehicle that Respondent was observed operating in the instant matter.

¹¹ N.T. 5.

The presiding ALJ precluded Officer Balestra from testifying about his observations of Respondent's activity on May 6, 2016¹² even though compliance history is considered by the Commission.¹³ The ALJ admitted I&E Exhibit No. 4 into evidence only for the limited purpose that another Complaint had been filed against Respondent.¹⁴

Also during the Initial Hearing, I&E moved to amend I&E's Complaint to conform to Officer Balestra's testimony that Respondent was in violation of Section 29.402 of the Commission's regulations, 52 Pa. Code § 29.402 (requiring vehicles to comply with PennDOT equipment inspection standards), and Section 175.66(h) of PennDOT's equipment inspection standards, 67 Pa. Code § 175.66(h) (prohibiting illuminated signs except on taxicabs, ambulances and trucks). The presiding ALJ denied I&E's motion.¹⁵

After the conclusion of the Initial Hearing and pursuant to the presiding ALJ's briefing order, I&E filed a Main Brief on February 24, 2017. Respondent did not file any brief.

On June 6, 2017, the Office of Administrative Law Judge ("OALJ") issued the I.D. of the presiding ALJ.¹⁶ The I.D. determined that "there is insufficient evidence to conclude that the individual was rendering unauthorized passenger service" and I&E's

¹² N.T. at 23.

¹³ See 52 Pa. Code § 69.1201(c)(6).

¹⁴ *Id.*

¹⁵ N.T. at 29.

¹⁶ The original date of issuance was June 5, 2017, but the letter issuing the I.D. contained the incorrect case caption and docket number. The I.D. was re-issued on June 6, 2017 to reflect the appropriate caption and docket number of this proceeding.

Complaint was dismissed.¹⁷ The I.D. also concluded that the Commission has no independent authority to enforce PennDOT's regulations.¹⁸

I&E's Exceptions follow.

B. SCOPE OF REVIEW

The Commission has the power to disregard and supersede the I.D. Section 335(a) of the Code states that, "on review of the initial decision, the commission has all the powers which it would have in making the initial decision" 66 Pa.C.S. § 335(a). The Commonwealth Court has determined that, "a broader grant of power to the Commission in the disposition of initial decisions in cases it chooses to review can scarcely be imagined." *G.G. & C. Bus Co. v. Pa. Pub. Util. Comm'n*, 400 A.2d 941, 944 (Pa. Cmwlth 1979). *See also City of Philadelphia v. Pa. Pub. Util. Comm'n*, 458 A.2d 1026 (Pa. Cmwlth. 1983). Thus, under this broad scope of review, the Commission may substitute its own findings of fact and conclusions of law as it sees fit based upon the evidence and record before it. Given that the I.D. inexplicably ignores substantial uncontested testimony and evidence presented by I&E at the Initial Hearing as well as Respondent's admission against his own interest, and makes a gross error of law in finding that the Commission has no independent authority to enforce PennDOT's regulations, the Commission should exercise its powers under Section 335 of the Code and wholly reject the I.D.

¹⁷ I.D. at 1.

¹⁸ Conclusion of Law No. 5.

II. I&E EXCEPTIONS

A. I&E EXEPTION NO. 1: The ALJ Erred In Finding That There Is Insufficient Evidence To Conclude That Respondent Was Holding Out To Provide Unauthorized Passenger Service¹⁹ When Respondent Admitted To It.

Generally, a party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). The applicable burden of proof standard before administrative tribunals is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is the lowest evidentiary standard and is tantamount to being “more probable than not.” *Commonwealth of Pa. v. Doranzo*, 529 A.2d 6, 8 (Pa. Super. 1987). Proof by the preponderance of the evidence is often described as a weighing of the evidence and a determination based upon which way the imaginary scales are tipped. *Id.* With a preponderance of the evidence standard, the scale is tipped even when 50.01% of the evidence weighs in favor of a party. Thus, I&E was required to present evidence even by the smallest amount than that presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

The substantial, uncontested evidence submitted by I&E makes it far more probable – even certain – that Respondent held himself out as an uncertificated passenger motor carrier than not. Officer Balestra testified that he observed an **illuminated** dome light on the roof of Respondent’s vehicle on Carson Street at approximately 10:40 PM on March 24, 2016 and that Carson Street was busy with people patronizing the bars and

¹⁹ I.D. at 1, Finding of Fact (“FOF”) No. 7, I.D. at 5-7.

restaurants on that evening.²⁰ The photographs that Officer Balestra took of Respondent's vehicle on that evening corroborate his testimony and depict Respondent's vehicle with an illuminated dome light on Carson Street.²¹ Officer Balestra's testimony was not challenged by Respondent.

In his Answer to I&E's Complaint, Respondent stated he used to drive for Yellow Cab and when business slowed down, he purchased a "taxi sign"²² on Amazon.com to pay his bills. Respondent then apologized for violating the Commission's regulation regarding dome lights.²³ "[I]t is well settled that admissions against interest freely and voluntarily made are admissible. Such admissions are of high evidentiary value." *CRL of Maryland v. Workmen's Comp. Appeal Bd. (Hopkins, Wellsboro Cemetery Assoc., and Donegal Mutual Ins. Co.)*, 627 A.2d 1238, 1243 (Pa. Cmwlth. 1993), citing *Logue v. Gallagher*, 3 A.2d 191 (Pa. Super. 1938).

Yet, the presiding ALJ afforded no weight to Respondent's admission and, in fact, deliberately disregarded Respondent's Answer by finding that I&E's evidence was based on speculation.²⁴ For example, Finding of Fact No. 7 concludes that there is no evidence that the dome light had the word "taxi" printed on it; such finding directly contradicts Respondent's written admission in his Answer indicating that the object was a "taxi sign."²⁵ The presiding ALJ also found that "Respondent could have been using the light

²⁰ N.T. at 8, 10-11.

²¹ I&E Exhibit Nos. 2 and 3.

²² See Respondent's Answer.

²³ *Id.* See 52 Pa. Code § 29.314(d).

²⁴ I.D. at 5.

²⁵ See Answer to Complaint.

on the roof of his vehicle to advertise any number of commercial enterprises,”²⁶ including food delivery. However, Respondent admitted in his Answer that he purchased the “taxi sign” so he could keep paying his bills after business slowed when he worked as a driver for Yellow Cab.²⁷ Indeed, there is no evidence that Respondent’s illuminated taxi dome light was used for any other purpose but to solicit unauthorized passenger transportation for compensation on a very crowded and popular street in Pittsburgh.

The presiding ALJ cites to *Monaci v. State Horse Racing Commission*, 717 A.2d 612 (Pa. Cmwlt. 1998), to show that circumstantial evidence cannot be used to prove a fact. However, the *Monaci* case is factually different from the instant matter in that Monaci, a horse trainer, did not admit or confess to stealing a urine sample of another horse in order to obtain a “clean” sample upon being accused that he had drugged his own horse. Rather, another trainer implicated Monaci, who successfully argued on appeal that the Racing Commission improperly imputed the implication upon him without any substantial evidence.

In the instant matter, facing allegations that Respondent improperly affixed a dome light to his vehicle and held himself out to transport passengers without authority, Respondent admitted to buying a “**taxi sign**”²⁸ to earn money because Respondent no longer drove for Yellow Cab. No third party imputed Respondent’s actions. Rather, Respondent freely admitted to committing the violations, which deserves the highest evidentiary value. *See CRL of Maryland*, 627 A.2d at 1243, *supra*. Thus, I&E has shown

²⁶ I.D. at 5.

²⁷ *See* Respondent’s Answer.

²⁸ *Id.*

by a preponderance of the evidence that Respondent violated Section 1101 of the Code, 66 Pa.C.S. § 1101, because it is far more probable than not that Respondent held himself out to provide unauthorized passenger transportation service on March 24, 2016.

B. I&E EXCEPTION NO. 2: The ALJ Erred In Orally Denying I&E's Motion For Judgment On The Pleadings.

On December 8, 2016, I&E filed a Motion for Judgment on the Pleadings pursuant to Section 5.102(a) of the Commission's regulations, 52 Pa. Code § 5.102(a). I&E argued in its Motion that the factual averments in its Complaint are not in dispute as Respondent specifically admitted to violating 52 Pa. Code § 29.314(d) in his Answer when he stated "I owe you an apologize [sic] for violating 52 Pa. Code § 29.314(d)." Respondent further explained in his Answer that he purchased a "taxi sign" on Amazon to pay his bills because he no longer worked as a driver for Yellow Cab. Respondent's admissions provided clear evidence that he held himself out to provide unauthorized passenger transportation service for compensation and improperly affixed a dome light to his vehicle. Respondent asserted no defense and did not contest any of the allegations advanced by I&E.

As there were no genuine issues of material fact, I&E argued in its Motion that a hearing in this case was not necessary or in the public interest and would be a fruitless exercise. *See Williams v. Lewis*, 466 A.2d 682, 683 (Pa. Super. Ct. 1983) ("Only where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should a judgment on the pleadings be entered"). *See also Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n*, 817 A.2d 593 (Pa. Cmwlth. 2003), *petition for allowance of appeal*

denied, 836 A.2d 123 (Pa. 2003) (holding that a hearing is necessary only to resolve disputed questions of fact and is not required to resolve questions of law, policy or discretion). I&E argued in its Motion that it was entitled to judgment as a matter of law.

Respondent did not file an answer to I&E's Motion for Judgment on the Pleadings. The presiding ALJ did not enter any written ruling on I&E's Motion for Judgment on the Pleadings.

At the outset of the Initial Hearing, the presiding ALJ verbally denied I&E's Motion, stating that "I don't think that you can say that there are no genuine issues of material fact in dispute."²⁹ No further explanation or analysis on this point was provided.

The presiding ALJ erred by verbally denying I&E's Motion for Judgment on the Pleadings without placing the denial in the form of a written order. *See* 52 Pa. Code § 5.102(d)(3) ("Denial of a motion [for summary judgment and judgment on the pleadings] will be in the form of a written order"). Since no interim order was entered denying I&E's Motion prior to the Initial Hearing, I&E had no opportunity to seek interlocutory review of the decision and potentially avoid an unnecessary evidentiary hearing. Indeed, no mention of I&E's Motion for Judgment on the Pleadings or the ALJ's denial of that Motion even appears in the I.D. Pursuant to Section 5.102(d)(3) of the Commission's regulations, 52 Pa. § 5.102(d)(3) (relating to Form of decision), the presiding ALJ's ruling was required to be in writing.

²⁹ N.T. 5.

As illustrated above, the pleadings clearly demonstrate that no genuine issue of material fact was in dispute given Respondent's admission in his Answer. An evidentiary hearing was not required and the ALJ erred by orally denying I&E's Motion.

C. I&E EXCEPTION NO. 3: The ALJ Erred In Finding That The Commission Has No Independent Authority To Enforce The Department Of Transportation's Regulations.³⁰

During the Initial Hearing, Officer Balestra testified that a PennDOT vehicle inspection standard prohibits the use of dome lights on non-taxi cab vehicles and that motor carrier enforcement officers are certified mechanics who enforce PennDOT's inspection regulations.³¹ Officer Balestra's testimony was supported by legal citations set forth in I&E's Main Brief demonstrating that the Commission has adopted PennDOT's inspection standards.³² Respondent did not contest Officer Balestra's testimony or the arguments advanced in I&E's Main Brief.

In complete disregard of the testimony and applicable law presented by I&E, the presiding ALJ found that "BIE has cited no authority which grants the Commission independent authority to enforce the Department of Transportation's regulations."³³ Additionally, the ALJ's sweeping conclusion that "[t]he Commission has no independent authority to enforce the regulations of the Pennsylvania Department of Transportation"³⁴

³⁰ I.D. at 8-9; Conclusion of Law No. 5.

³¹ N.T. 18.

³² I&E's Main Brief states, in pertinent part, that: ". . . Respondent was operating his personal vehicle, a non-taxicab vehicle with an illuminated dome light, which is also unlawful under PennDOT's vehicle inspection standards at 67 Pa. Code § 175.66(h), as adopted by the Commission at 52 Pa. Code § 29.402(1)." I&E's Main Brief at 10.

³³ I.D. at 8-9.

³⁴ Conclusion of Law No. 5.

is legally erroneous and must be overturned to protect the Commission's authority and duty to inspect motor vehicles.

Section 29.402(1) of the Commission's regulations, 52 Pa. Code § 29.402(1), directs that vehicles used in common carriage service with a seating capacity of fifteen passengers or less must comply with PennDOT equipment inspection standards as set forth in 67 Pa. Code Chapter 175 (relating to vehicle equipment and inspection). Upon a challenge of the Commission's authority to enforce PennDOT's Chapter 175 standards and impose a civil penalty for violating those standards, the Commonwealth Court held that the Commission has the authority and duty to inspect motor vehicles used in common carriage service and that incorporating PennDOT's regulations did not improperly enlarge the Commission's jurisdiction over motor vehicles. *Harrisburg Taxicab & Baggage Company t/a Yellow Cab v. Pa. Pub. Util. Comm'n*, 786 A.2d 288 (Pa. Cmwlth. 2001). "The PUC's decision to incorporate DOT regulations in an area where the two agencies possess overlapping authority is in no way inappropriate. Rather such harmonization is salutary." *Id.* at 293.

Indeed, a plethora of other legal authority³⁵ exists for the Commission to enforce PennDOT's laws and regulations concerning vehicle inspections. I&E Motor Carrier Enforcement Officers are authorized to stop taxis, limousines and vans with a seating capacity of less than fifteen passengers that are in operation to perform inspections of those vehicles. *See* 66 Pa.C.S. § 307 and 52 Pa. Code § 29.406 (relating to Inspections

³⁵ This additional legal authority was not raised below by I&E because Respondent had not challenged the Commission's authority in this arena and I&E provided the most relevant legal authority in its Main Brief. Rather, the challenge concerning the Commission's authority to enforce PennDOT regulations occurred for the first time in the presiding ALJ's I.D.

by enforcement officers). I&E Motor Carrier Enforcement Officers take state inspection classes and become certified mechanics.³⁶ They employ the PennDOT vehicle inspection standards as codified in 67 Pa. Code Chapter 175 to determine whether the vehicles are mechanically safe. I&E Motor Carrier Enforcement Officers are empowered to declare a vehicle to be out-of-service if the vehicle did not comply with PennDOT inspection standards. 52 Pa. Code § 29.406(c).

For larger, commercial motor carriers, including those with seating capacities greater than fifteen passengers, I&E Motor Carrier Enforcement Officers are deemed to be “qualified Commonwealth employees,” pursuant to 75 Pa.C.S. § 4102, and are authorized to inspect commercial motor vehicles used in both interstate and intrastate commerce to determine whether they meet standards established in PennDOT’s regulations. *See* 75 Pa.C.S. § 4704(a)(2), 67 Pa. Code §§ 229.1 *et seq.* and 67 Pa. Code §§ 231.1 *et seq.* *See also* the Commission’s website, which describes the Motor Carrier Safety Assistance Program (“MCSAP”) at the following link:

http://www.puc.state.pa.us/utility_industry/transportation/motor_carrier/safety_assistance_program.aspx. The Vehicle Code even states that PennDOT “shall coordinate with the Pennsylvania Public Utility Commission in the enforcement of this section . . .” (relating to vehicle inspections by police or Commonwealth personnel). 75 Pa.C.S. § 4704(h).

The Commission also has the authority to assign a Motor Carrier Enforcement Officer to inspect commercial motor vehicles upon a complaint from an employee that such vehicle is not in compliance with the provisions of 67 Pa. Code Ch. 231 of

³⁶ N.T. at 18.

PennDOT's regulations (relating to Intrastate Motor Carrier Safety Requirements); the Officer's signed report constitutes *prima facie* evidence and may be introduced in a legal proceeding. 75 Pa.C.S. § 1619. Furthermore, Commission employees who have completed a training program approved by PennDOT are authorized to institute criminal proceedings by citation under the Pennsylvania Rules of Criminal Procedure for violations related to vehicle registration. 75 Pa.C.S. § 6117. Finally, the Vehicle Code, 75 Pa.C.S. §§ 101, *et seq.*, even permits vehicles owned or operated by the Commission and used in motor carrier enforcement to be deemed emergency vehicles and be equipped with revolving or flashing red lights. 75 Pa.C.S. § 4571(c.1). Thus, the ALJ's broad conclusion that the Commission has no independent authority to enforce PennDOT's regulations³⁷ constitutes a clear error of law and must be reversed to preserve the Commission's jurisdiction and the public interest with respect to vehicle safety.

The ALJ also erred by determining that Respondent did not commit any violation by affixing a dome light to his vehicle.³⁸ In the instant matter, Officer Balestra testified that Respondent's use of the illuminated taxi dome light on the roof of his personal vehicle violated a PennDOT vehicle inspection standard which the Commission is authorized to enforce because Respondent's vehicle was being used in passenger motor carrier service.³⁹ Section 175.66(h) of PennDOT's vehicle inspection standards provides, in pertinent part, as follows:

³⁷ Conclusion of Law No. 5.

³⁸ I.D. at 7-8.

³⁹ N.T. 17-18.

(h) *Ornamental lamps.* A lamp not enumerated in this section and not located as described in Tables III, IV and V of this chapter, is prohibited unless it is available as original equipment. An illuminated sign is prohibited except on taxicabs, ambulances and trucks.

67 Pa. Code § 175.66(h).

Thus, the general rule provides that vehicles are not permitted to have ornamental lamps subject to limited exception. Respondent's 2003 Hyundai sports utility vehicle does not fit within any exception and the illuminated taxi sign that appeared on the roof of his vehicle violated 67 Pa. Code § 175.66(h). Since it is undisputed that the vehicle was being used to solicit unauthorized passenger transportation service for compensation,⁴⁰ I&E has the authority to enforce Section 175.66(h) of PennDOT's vehicle inspection standards upon Respondent.

I&E moved to amend its Complaint at the Initial Hearing to conform to Officer Balestra's testimony that Respondent violated 67 Pa. Code § 175.66(h) by affixing an illuminated sign on his vehicle.⁴¹ *See* 52 Pa. Code § 5.92 (relating to Amendments to conform to the evidence). The ALJ denied I&E's Motion, reasoning that Respondent was not provided with notice that it was in violation of 67 Pa. Code § 175.66(h).⁴² However, I&E did not introduce a new factual issue at hearing. The issue regarding improperly affixing a dome light to Respondent's vehicle was pled in I&E's Complaint.⁴³ I&E merely presented an alternative legal argument if the ALJ were not inclined to find Respondent in violation of Section 29.314(d) of the Commission's regulations, 52 Pa.

⁴⁰ *See* Respondent's Answer to I&E's Complaint.

⁴¹ N.T. at 28.

⁴² N.T. at 29; I.D. at 8.

⁴³ *See* Paragraph 3 of the Complaint.

Code § 29.314(d).⁴⁴ Respondent also had the opportunity to respond to I&E’s legal argument that he violated 67 Pa. Code § 175.66(h) by filing a reply brief, which he did not file. In any event, Respondent admitted to violating Section 29.314(d) of the Commission’s regulations, 52 Pa. Code § 29.314(d), when he stated “I owe you an apologize [sic] for violating 52 Pa. Code § 29.314(d).”

Thus, the presiding ALJ’s conclusion that I&E presented insufficient evidence to show that Respondent did not improperly affix a dome light to his vehicle and that the Commission has no independent legal authority to enforce PennDOT’s regulations should be reversed.

⁴⁴ N.T. at 29.

III. CONCLUSION

For the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Commission grant the Exceptions, reverse the Initial Decision of the Administrative Law Judge, sustain the Complaint, impose a civil penalty in the amount of One Thousand Dollars (\$1,000), refer the vehicle registration to the Pennsylvania Department of Transportation for suspension, and grant other relief as deemed appropriate.

Respectfully submitted,



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Dated: June 26, 2017

Pennsylvania Public Utility Commission :
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Complainant :
v. : Docket No. C-2016-2537014
Charles H. Edwards, Jr., :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by First Class Mail:

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Dated: June 26, 2017