

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
	:	C-2016-2545901
v.	:	C-2016-2554744
	:	
Stanley Lampkin	:	

**INITIAL DECISION  
GRANTING MOTION FOR DEFAULT JUDGMENT**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

INTRODUCTION

This Initial Decision grants a Motion for Default Judgment in part and denies in part, sustains the first complaint and denies the second complaint, and imposes a civil penalty for failure to comply with the provisions of the Public Utility Code governing operating without a certificate of public convenience. The Motion for Default Judgment, or in the alternative Motion for Judgment on the Pleadings, involves two consolidated complaints which allege Stanley Lampkin violated Section 1101 of the Public Utility Code<sup>1</sup> on two separate occasions when he held himself out to provide passenger transportation service for compensation without first obtaining a certificate of public convenience and violated Section 29.314(d) of Title 52 of the Pennsylvania Code<sup>2</sup> on one of those occasions when he had a dome light displayed on the dashboard of his vehicle.

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<sup>1</sup> 66 Pa.C.S.A. § 1101.

<sup>2</sup> 52 Pa.Code § 29.314(d).

## HISTORY OF THE PROCEEDING

On May 19, 2016, the Bureau of Investigation & Enforcement (BIE) filed a formal complaint (First Complaint) with the Pennsylvania Public Utility Commission (Commission) against Stanley Lampkin (Respondent or Mr. Lampkin). BIE alleged Mr. Lampkin was driving a 2004 Saturn sedan in Pittsburgh, Pennsylvania on May 13, 2016 when he held himself out as providing transportation for compensation even though he does not hold a certificate of public convenience from the Commission. On May 20, 2016, the Secretary's Bureau of the Commission mailed a Secretarial Letter to Mr. Lampkin, at 236 West Sixth Street, 1C, Tarentum, Pennsylvania 15084, explaining to Respondent that a complaint had been filed against him by BIE and he needed to respond.

On June 16, 2016, Mr. Lampkin filed an answer in which he listed his address was 236 W. Sixth Avenue, 1C, Tarentum, PA 15084 and admitted being "guilty of the motor vehicle infraction that happened on May 13, 2016."

On August 10, 2016, BIE filed a second formal complaint (Second Complaint) with the Commission against Mr. Lampkin. BIE alleged Mr. Lampkin had a dome light with the word, "Yellow," mounted on the dashboard of a 2004 Saturn sedan he was driving on June 4, 2016 in Pittsburgh, Pennsylvania even though Mr. Lampkin does not hold a certificate of public convenience from the Commission. On August 10, 2016, the Secretary's Bureau of the Commission mailed a Secretarial Letter to Mr. Lampkin, at 236 West Sixth Street, 1C, Tarentum, Pennsylvania 15084, explaining to Respondent that a complaint had been filed against him by BIE and he needed to respond.

On September 8, 2016, Mr. Lampkin filed an answer in which he listed his address as 236 W. 6<sup>th</sup> Avenue, Tarentum, PA 15084. Respondent denied running a Yellow cab business from his house but admitted "taking a fare from the casino to bus station."

On May 16, 2017, the Office of Administrative Law Judge (OALJ) assigned the First Complaint to be heard by Administrative Law Judge Mark A. Hoyer (ALJ Hoyer) and

assigned the Second Complaint to be heard by Administrative Law Judge Katrina L. Dunderdale (ALJ Dunderdale).

On May 16, 2017, the OALJ issued a Hearing Notice which scheduled an initial in-person hearing in the Second Complaint proceeding for Tuesday, July 11, 2017 at 10:00 a.m. before ALJ Dunderdale. The Hearing Notice was mailed to Respondent at 236 West 6<sup>th</sup> Avenue, Apt 1C, Tarentum, Pennsylvania 15084.

On May 17, 2017, ALJ Dunderdale issued the Prehearing Order in the Second Complaint, which specified various procedural matters and reminded the parties about their relative responsibilities during the pendency of the proceeding. ALJ Dunderdale mailed the Prehearing Order to Respondent at 236 West 6<sup>th</sup> Avenue, Apt. 1C, Tarentum, Pennsylvania 15084.

The Secretarial Letters issued by the Secretary's Bureau in the First Complaint and in the Second Complaint, which notified Mr. Lampkin that BIE had filed a complaint against him, were not returned to the Commission as undeliverable by the United States Postal Service (USPS).

On May 22, 2017, the Prehearing Order dated May 17, 2017 was returned to the Commission with a notation by the USPS stating, "Return to Sender Lampkin Moved Left No Address Unable to Forward Return to Sender."

On May 24, 2017, the Hearing Notice dated May 16, 2017 was returned to the Commission with a notation by the USPS stating, "Moved Left No Address, Unable to Forward, Return to Sender."

On May 25, 2017, ALJ Dunderdale issued the First Interim Order which consolidated the two formal complaints, converted the hearing previously scheduled in the Second Complaint for July 11, 2017 into a telephonic status conference for both complaints, and

ordered BIE to provide an updated address for Respondent as soon as Respondent's address could be ascertained.

On May 26, 2017, the OALJ issued a Hearing Cancellation/Reschedule Notice which noted the consolidation of the two complaints and scheduled a telephonic status conference for the same day as the originally-scheduled initial hearing, Tuesday, July 11, 2017 at 10:00 a.m.

On July 5, 2017, BIE filed a Motion for Default Judgment, or in the alternative for Judgment on the Pleadings, pursuant to 52 Pa.Code § 5.103, endorsed with a notice to plead. The motion was served on Respondent at 1821 Park Line Drive, Apt. 34, Pittsburgh, Pennsylvania 15227. In its motion, BIE averred it filed two complaints against Mr. Lampkin, that Respondent received the complaints and that he filed untimely answers to both complaints in which Mr. Lampkin admitted he provided transportation for compensation without authority. The motion requests that the Commission enter a default order against Respondent ordering that Mr. Lampkin pay a civil penalty of \$2,000. The motion also requests that the Commission enter a default order notifying the Pennsylvania Department of Transportation that Mr. Lampkin's vehicle registration should be suspended.

The Motion for Default Judgment dated July 5, 2017 was served on Mr. Lampkin at the new address and was not returned by the USPS as undeliverable.

On July 11, 2017, the presiding officer conducted a telephonic status conference at which BIE was represented by counsel. Mr. Lampkin was not present. The transcript from the status conference was received on July 24, 2017.

BIE's Motion for Default Judgment is ready for decision.

## FINDINGS OF FACT

1. Complainant is the Commission's Bureau of Investigation and Enforcement (BIE).
2. The Commission has delegated its authority with regard to enforcement of its motor carrier regulations and assessments to BIE.
3. Respondent is Stanley Lampkin (Mr. Lampkin) whose mailing address was 236 West Sixth Avenue, Apartment 1C, Tarentum, Pennsylvania 15084 until at least August 10, 2016.
4. Respondent's last known mailing address is 1821 Park Line Drive, Apt. 34, Pittsburgh, Pennsylvania 15227.
5. The Commission has not issued a certificate of public convenience to Mr. Lampkin to operate as a common carrier.
6. On May 19, 2016, BIE filed a formal complaint (First Complaint) against Respondent.
7. The First Complaint alleged that on May 13, 2016 in Pittsburgh, Pennsylvania, Mr. Lampkin agreed to drive a passenger in a 2004 Saturn sedan (with license plate number JPE 9928) for a fare of \$12 from the downtown area to the North Shore, even though he does not hold a certificate of public convenience from the Commission, violating 66 Pa.C.S.A. § 1101.
8. The First Complaint requested the Commission direct Mr. Lampkin to pay a civil penalty totaling \$1,000 for transporting an individual for compensation without a certificate of public convenience issued by the Commission.

9. The First Complaint also requested the Commission issue an order certifying Mr. Lampkin's automobile registration for the 2004 Saturn sedan (with license plate number JPE 9928) should be suspended by the Pennsylvania Department of Transportation.

10. The First Complaint was served by certified mail on Respondent on May 20, 2016, and included a notice advising Mr. Lampkin that he had twenty days in which to file an answer.

11. Twenty days from May 20, 2016 was June 9, 2016.

12. On June 16, 2016, Mr. Lampkin filed an answer to the First Complaint.

13. In the answer to the First Complaint, Mr. Lampkin stated, "I am defenetely (sp) guilty of the motor vehichle (sp) infraction that happened on May 13, 2016. I humbly (sp) ask that you show leniency in suspending my license. I was desperately in need of a few bucks is why I committed the infraction. I need my lisenca (sp) to get back and forth to work 15 miles each. Please consider this in your finding."

14. On August 10, 2016, BIE filed another formal complaint (Second Complaint) against Respondent.

15. The Second Complaint alleged, in numbered paragraph 2, that at 12:25 a.m. on June 4, 2016 in Pittsburgh, Pennsylvania, Mr. Lampkin "operated his 2004 Saturn sedan, bearing Pa. registration number JPE9928. The vehicle had a dome light mounted on the dashboard which displayed the word YELLOW. Respondent does not hold a certificate of public convenience from this Commission."

16. In numbered paragraph 3 of the Second Complaint, BIE alleged "Respondent, by affixing a taxi dome light to the dashboard of the vehicle, violated 52 Pa. Code §29.314(d)."

17. In numbered paragraph 4, BIE alleged “Respondent, by holding out to provide passenger service between points in Pennsylvania while not having operating authority with this Commission, violated the Public Utility Code, 66 Pa. C.S. §1101.”

18. The Second Complaint requested the Commission direct Mr. Lampkin to pay a civil penalty totaling \$1,000 for operating a vehicle with a taxi dome light when he did not hold a certificate of public convenience to operate as a call and demand carrier.

19. The Second Complaint also requested the Commission issue an order certifying the automobile registration for the 2004 Saturn sedan (with license plate number JPE 9928) should be suspended by the Pennsylvania Department of Transportation.

20. The Second Complaint was served by certified mail on Respondent on August 10, 2016, and included a notice advising Mr. Lampkin that he had twenty days in which to file an answer.

21. Twenty days from August 10, 2016 was August 30, 2016.

22. On September 8, 2016, Mr. Lampkin filed an answer to the Second Complaint.

23. In the answer to the Second Complaint, Mr. Lampkin stated, “This is in response to me supposedly running a cab (yellow) business from my house. Totally untrue. I have full time employment at Town & Cantry (sp) Dry Cleaners (412) 766-1182) Place of employment. I admit to taking fare from casino to bus station but I am not running an illegal yellow cab service. Nobody confiscated sign from me.”

24. Sometime after August 10, 2016 and before May 2017, Respondent moved from 236 West Sixth Avenue, Apartment 1C, Tarentum, Pennsylvania 15084.

25. Respondent did not leave a forwarding order or provide the Commission with a current address.

26. After May 25, 2017, BIE conducted periodic searches of the database maintained by the Pennsylvania Department of Transportation in an attempt to obtain a valid and current address for Respondent.

27. On June 29, 2017, BIE located a new address for Respondent at 1821 Park Line Drive, Apartment 34, Pittsburgh, Pennsylvania 15227.

28. On July 5, 2017, BIE filed a Motion for Default Judgment, or in the alternative for Judgment on the Pleadings, and served a copy of the motion on Respondent at 1821 Park Line Drive, Apt. 34, Pittsburgh, Pennsylvania 15227.

#### DISCUSSION

The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa.C.S.A. § 501(a). The Commission previously delegated its authority with regard to enforcement of its motor carrier regulations to the Bureau of Transportation and Safety (BTS) with the Law Bureau acting as attorney for BTS. Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities, Docket No. M-00940593 (Order entered September 2, 1994). The Commission delegated this authority in response to the decision in Lyness v. State Board of Medicine, 605 A.2d 1204 (Pa. 1992) which prohibited the comingling of prosecutory and adjudicatory functions by Commonwealth agency decision makers. Subsequently, pursuant to Act 129 of 2008, the Commission was reorganized and the Commission delegated its authority with regard to enforcement of its motor carrier regulations and assessments to BIE. Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

As the participant seeking an order from the Commission, BIE bears the burden of proof, pursuant to the provisions of 66 Pa.C.S.A. § 332(a). The degree of proof that BIE must



meet to establish its case before the Commission is preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). The phrase “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

### Untimely Filed Answers

BIE alleges Mr. Lampkin violated the Public Utility Code when he offered transportation services for compensation without a certificate of public convenience, and when he drove around with a “Yellow” dome light on his dashboard. BIE contends Mr. Lampkin twice violated 66 Pa.C.S.A. § 1101 and once violated 52 Pa.Code § 29.314(d).

Mr. Lampkin filed separate answers to both complaints but both answers were filed one week after the twenty-day response time listed in the Notice to Plead on both complaints. By not filing a timely answer to the complaint, BIE argued Respondent is deemed to have admitted the well-pled allegations in the two formal complaints. BIE’s argument is pursuant to 52 Pa.Code § 5.61(c), which states that a respondent who fails to file an answer to a complaint within twenty days may be deemed to be in default and the facts set forth in the complaint may be deemed admitted.

The record in this proceeding indicates that the Commission served a copy of both formal complaints on Mr. Lampkin. The Notice to Plead, attached to both complaints, advised Mr. Lampkin that if he failed to answer the complaint within twenty days that BIE would request that the Commission issue an order imposing the penalties set forth in the complaints. Mr. Lampkin did answer the formal complaints but both times he answered one week after the expiration of the response period for filing an answer.

The language used in 52 Pa.Code § 5.61(c) is permissive. In other words, Mr. Lampkin’s failure to file an answer may be deemed (or determined) to be a sign Mr. Lampkin is in default, and the facts alleged by BIE may be deemed admitted as facts. The

regulatory language is not mandatory. In this proceeding, Respondent is an individual who was not represented by an attorney. His answers were filed late but only one week late. Given his *pro se* status, his delay of one week both times did not produce any material disadvantage to BIE, if it caused any disadvantage at all.

Therefore, BIE's request to have the two formal complaint proceedings decided by default against Mr. Lampkin is denied as inappropriate based upon the totality of the facts.

### Judgment on the Pleadings

The regulations, at 52 Pa.Code § 5.102, permit BIE to move for judgment on the pleadings after the pleadings close and if the motion will not delay the conduct of a hearing. BIE filed its Motion for Default Judgment on July 5, 2017. BIE argued that if the Motion for Default Judgment was not granted, then it moved for the Commission to grant a request for a judgment in its favor based on the pleadings. Having determined that the Motion for Default Judgment should not be granted because both of Mr. Lampkin's answers were filed one week late, BIE's request to decide these proceedings based upon the pleadings is ripe for a decision.

A presiding officer may grant a motion for judgment on the pleadings, if "the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law."<sup>3</sup> A presiding officer may grant a request for a judgment on the pleadings in part if "there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues."<sup>4</sup>

The First Complaint's allegations are that Mr. Lampkin agreed to drive a passenger from downtown Pittsburgh to the North Shore in Pittsburgh despite Mr. Lampkin not

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<sup>3</sup> See 52 Pa.Code § 5.102(d)(1).

<sup>4</sup> See 52 Pa.Code § 5.102(d)(2).

having a certificate of public convenience. Mr. Lampkin's answer to the First Complaint acknowledged he offered transportation services for compensation on May 13, 2016.

The Second Complaint alleges Mr. Lampkin was driving with a dome light mounted on the dashboard which had the word "Yellow" emblazoned on it, and that Mr. Lampkin did not hold a certificate of public convenience from the Commission. Mr. Lampkin denied in his answer that he was running an illegal Yellow cab business but admitted to taking a fare from the casino on the North Shore to the bus station in downtown Pittsburgh. BIE argues this response from Mr. Lampkin is an admission that he operated without authority from the Commission, as was also alleged in the First Complaint.

I agree with BIE's interpretation that Mr. Lampkin's answer is an admission to operating without authority. The transportation Mr. Lampkin admitted to offering or providing were between the same two points (the casino and the bus station). In his first answer, Mr. Lampkin admits to driving to the casino while in the second answer he admits to driving from the casino.

However, in addition to the allegation that Mr. Lampkin provided transportation for compensation, the Second Complaint also contains an averment that Mr. Lampkin operated his vehicle with a dome light in violation of 52 Pa.Code § 29.314(d).<sup>5</sup> While it is true that Mr. Lampkin admits to taking a fare from the casino on the north side to the bus station, the second allegation in the Second Complaint also refers to a violation of a provision about vehicle requirements for certificated call and demand carriers, which Mr. Lampkin is not. I disagree with BIE's contention that Mr. Lampkin's statement he had a dome light on his dashboard is a tacit admission he violated 52 Pa.Code § 29.314(d). That regulatory provision does not apply to Mr. Lampkin because he is not a certificated carrier.

A simple reading of Respondent's answer to the Second Complaint is that he admits to the allegation from the First Complaint (that he took a fare from the casino to the bus

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<sup>5</sup> The regulation specifically requires that a dome light must be affixed to the roof of the vehicle, be visible at least 100 feet away from the car, and be lit only when there is no customer in the vehicle.

station) but he denies running an illegal Yellow cab service. I conclude a plain reading of Mr. Lampkin's pleading (the answer) leads to the conclusion that he admitted to the violation from the First Complaint but denied the "Yellow" dome light was evidence he was providing transportation services.

Under the circumstances, I conclude that Mr. Lampkin admitted he violated the Public Utility Code by operating a motor vehicle and offering transportation services for compensation on May 13, 2016 and June 4, 2016 in Pittsburgh, Pennsylvania, but denied he violated the regulatory provisions about using a dome light when a certificated call and demand carrier.

### Civil Penalty

Having concluded that Mr. Lampkin violated the Public Utility Code and Commission regulations, I will determine the amount of the civil penalty the Commission should impose using the considerations that the Commission first enunciated in Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P., Docket No. C-00992409 (Order entered March 16, 2000). Pursuant to 52 Pa.Code § 69.1201, the Commission adopted a policy statement setting forth the standards it will consider in evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations based in part on the standards in Rosi. The standards in 52 Pa.Code § 69.1201(c) are set forth below:

(c) The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious

nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

The first factor addresses whether the conduct at issue was of a serious nature. Based on the allegations in the complaints, I conclude that the conduct was of a serious nature as defined by the Commission's policy statement. At issue are two instances when Respondent admitted he offered transportation for compensation. Therefore, it appears Mr. Lampkin

engaged in willful misconduct and, based on this consideration, I conclude that Respondent's conduct should result in a greater penalty.

The second factor addresses the consequences of the conduct at issue. The allegations in the complaint do not indicate any consequences of the violations. No personal injury or property damage resulted from the violations, however, Mr. Lampkin willingly and knowingly disregarded the regulations. Nevertheless, based on the lack of any consequences of the conduct at issue, I conclude this factor mitigates for a lesser penalty.

The third factor addresses whether the conduct was negligent or intentional. Here, it appears Respondent knew in May 2016 that his actions were a violation plus the allegations in the Second Complaint indicate continuing intentional conduct. Mr. Lampkin was aware from the allegations in the First Complaint that he had an obligation to obtain a certificate of public convenience from the Commission before he offered transportation services in exchange for compensation. Based on these considerations, I conclude that this intentional conduct should result in a greater penalty.

The fourth factor looks at remedial actions taken by Respondent. There is no allegation in the complaints or in the answers that Mr. Lampkin took any remedial actions. Based on this consideration, I conclude that Respondent's failure to take any remedial measures should result in a greater penalty.

The fifth factor addresses the number of customers affected and the duration of the violation. The allegations in both complaints do not indicate if any customers were affected. The allegations in the complaints indicate the violations are ongoing since Mr. Lampkin continued to offer transportation services in exchange for compensation after receiving notice of the first citation. Based on these considerations, I conclude that the fact that no customers were affected is outweighed by the ongoing nature of the violations and should result in a greater penalty.

The sixth standard looks at the compliance history of the regulated entity. Since Mr. Lampkin is not a regulated entity, he does not have a compliance history. In addition, BIE did not allege that Mr. Lampkin had been cited prior to May 13, 2016. I conclude the absence of any prior violations mitigates in favor of a lesser penalty for this factor.

The seventh standard asks whether the regulated entity cooperated with the Commission. The allegations in the complaints indicate that Mr. Lampkin failed to cooperate with the Commission by failing to cease from engaging in unauthorized conduct and by failing to maintain a current mailing address. Based on these considerations, I conclude that Respondent's failure to cooperate should result in a greater penalty.

The eighth standard requires that the amount of the civil penalty is enough to deter future violations. Given the circumstances of this proceeding, I conclude that a civil penalty will deter from future violations but a penalty as large as the one requested by BIE is unnecessary.

The ninth standard looks at past Commission decisions in similar situations. BIE did not provide any information or cite to any past Commission decisions that imposed a civil penalty in a similar situation. The presiding officer found a few Commission decisions that provide some guidance.

In Pa. Pub. Util. Comm'n v. John R. Pierce at Docket No. C-2012-2318094 (February 5, 2013), the Commission ordered a certificated limousine carrier to pay \$252, which included a \$30 civil penalty, which failed to pay its annual assessment. The Commission ordered the payments after granting a motion for default judgment. The Commission authorized a civil penalty without conducting a hearing on what is an appropriate penalty for the underlying violation. However, I conclude the Commission's decision in that proceeding mitigates in favor of a lower penalty. Accordingly, I conclude the penalty against Mr. Lampkin for offering to drive for compensation does not justify a civil penalty totaling \$1,000 for each of the two citations. A more appropriate penalty under the circumstances is \$100 per violation, or \$200 for both violations.

The tenth standard looks at other relevant factors. There is no evidence or cases cited that would support BIE's argument that the Commission should issue civil penalties amounting to \$2,000 and to ask the Department of Transportation to rescind Mr. Lampkin's vehicle registration. It appears BIE requested \$1,000 per violation but there is no suggestion or argument why \$1,000 per violation in this type of proceeding is appropriate. Furthermore, Mr. Lampkin's answers clearly indicate Mr. Lampkin is short of financial resources. To issue a civil penalty which is relatively enormous plus suspend the vehicle registration for someone who must drive for their employment (which would provide the financial resources needed to pay off the civil penalty) seems fool-hardy and potentially draconian. I conclude these factors mitigate in favor of a lesser penalty.

Based on a review of the standards set forth above, I conclude that the civil penalty in the amount of \$2,000, requested by BIE, is not appropriate for the violations set forth in the complaints. A more appropriate amount, given the nature of the violations and the other factors cited above, is \$200.

#### Dome Light

BIE failed to meet its burden in the Second Complaint to show that Mr. Lampkin violated 52 Pa.Code § 29.314(d) when he had a "Yellow" dome light on his dashboard. "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." BIE did not point to or cite any law which makes it a violation for a non-certificated entity to use a dome light including a dome light with the word "Yellow" on it. In addition, the "dome" light was not on the hood of the vehicle but on the dashboard. BIE did not aver that displaying a dome light on the dashboard was synonymous under the regulations to displaying a dome light on the roof of the vehicle. I conclude it would not be appropriate to penalize Mr. Lampkin for both failing to obtain a certificate of public convenience as well as for failing to comply with the totality of the Commission's requirements for vehicle and equipment, such as vehicle age and mileage, meters, seating capacity or dome lights. Without any averment from



BIE to the contrary, I conclude it is inappropriate to find that Mr. Lampkin violated the provisions at 52 Pa.Code § 29.314(d).

### Request to Suspend Vehicle Registration

I conclude it is appropriate to grant BIE's request that the Commission direct the Pennsylvania Department of Transportation to suspend Respondent's automobile registration for the 2004 Saturn bearing Pennsylvania license plate number JPE 9928, until such time as Mr. Lampkin pays the civil penalty in this proceeding, pursuant to 75 Pa.C.S.A. § 1375. When the Commission presents a notice to PennDOT that the Commission, has found and determined that a vehicle has been operated as a common carrier without the approval of the Commission, then PennDOT will suspend the registration of that vehicle. Mr. Lampkin admitted to the allegations in the First Complaint and also admitted in his answer to the Second Complaint that he was driving without a certificate of authority. It is not excessive to suspend a person's vehicle registration as a result of offering to provide transportation services for compensation on two occasions. Once Mr. Lampkin pays the civil penalty, he can petition PennDOT to rescind the suspension of his vehicle's registration.<sup>6</sup>

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 1101 and 52 Pa.Code § 29.314(d).
2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa.C.S.A. § 501(a) and § 1101.
3. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is on the Bureau of Investigation and Enforcement.

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<sup>6</sup> See 75 Pa.C.S.A. § 1375(b).

4. The degree of proof required to establish a case before the Commission is a preponderance of the evidence. 66 Pa.C.S.A. § 501(a).

5. Preponderance of the evidence means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.

6. As a person who offered transportation services in exchange for compensation, Stanley Lampkin had a duty to obtain a Commission-issued certificate of public convenience, and to comply with Commission orders and regulations. 66 Pa.C.S.A. § 501(c).

7. The Commission may impose a civil penalty of up to \$1,000 for each separate violation of the Public Utility Code.

8. The Department of Transportation shall suspend the registration of any vehicle used by a person who offers transportation services in exchange for compensation without a certificate of public convenience upon presentation of a notice from the Commission. 75 Pa.C.S.A. § 1375.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Default Judgment filed on July 5, 2017, by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission is granted.

2. That the complaints filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Stanley Lampkin at C-2016-2545901 and

C-2016-2554744 are sustained in part in that Stanley Lampkin admitted to offering transportation services for compensation without a certificate of public convenience in violation of 66 Pa.C.S.A. § 501(c) on May 13, 2016 and June 4, 2016.

3. That the complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Stanley Lampkin at C-2016-2545901 is denied in part in that the Bureau of Investigation and Enforcement failed to show that Stanley Lampkin violated 52 Pa.Code § 29.314(d).

4. That Stanley Lampkin shall pay a civil penalty of Two Hundred Dollars (\$200) for the violations set forth in the Bureau of Investigation and Enforcement's complaints, as provided for in the Public Utility Code, 66 Pa.C.S.A. § 3301, by certified check or money order, within twenty (20) days after service of the Commission's order, made payable to "Commonwealth of Pennsylvania" and forwarded to the following address:

Secretary's Bureau  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

5. That Stanley Lampkin cease and desist from further violations of the Public Utility Code and the Pennsylvania Public Utility Commission's regulations.

6. That if Stanley Lampkin fails to pay the amount set forth in Ordering Paragraph 4 above within twenty days of the entry of a final Commission Order, that a copy of a final Commission order shall be served on the Pennsylvania Department of Transportation, pursuant to 75 Pa.C.S.A. §§ 1301-1379, requesting that the Pennsylvania Department of Transportation put an administrative hold on Stanley Lampkin's vehicle registrations. Stanley Lampkin will not be able to register any new vehicles or renew any existing vehicle registrations until all civil penalties are paid.

7. That after Stanley Lampkin pays the amounts set forth in Ordering Paragraph 4 above, the records at Docket Nos. C-2016-2545901 and C-2016-2554744 shall be marked closed.

Date: August 23, 2017

/s/  
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Katrina L. Dunderdale  
Administrative Law Judge