



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

IN REPLY PLEASE
REFER TO OUR FILE

October 4, 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. Stanley Lampkin
Docket Nos. C-2016-2545901 and C-2016-2554744
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,

A handwritten signature in black ink, appearing to read "K. Myers", is written over a light gray circular watermark.

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: ra-OSA@pa.gov
Honorable Katrina L. Dunderdale
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: October 4, 2017

I. INTRODUCTION

The Initial Decision (“I.D.”) of the presiding Administrative Law Judge (“ALJ”) denies the Bureau of Investigation and Enforcement’s (“I&E”) Motion for Default Judgment, grants, in part, and denies, in part, I&E’s Alternative Motion for Judgment on the Pleadings, and imposes a civil penalty in the amount of \$200 and suspension of Respondent’s vehicle registration by the Pennsylvania Department of Transportation (“PennDOT”) for holding out to provide unauthorized passenger transportation service on two (2) separate occasions.¹ Specifically, the presiding ALJ granted I&E’s Motion for Judgment on the Pleadings in finding that Stanley Lampkin (“Respondent”) committed two (2) discrete violations of Section 1101 of the Public Utility Code (“Code”), 66 Pa.C.S. § 1101, on May 13, 2016 and June 4, 2016 and denied that Respondent violated Section 29.314(d) of the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) regulations, 52 Pa. Code § 29.314(d).² Despite finding that Respondent violated the Code and offering an analysis of each of the ten factors to be considered when determining an appropriate civil penalty to be assessed for each of the two (2) violations found, the ALJ nevertheless failed to translate these findings into a civil penalty that is appropriate and representative of her own findings.

I&E files these Exceptions to the August 23, 2017 Initial Decision of ALJ Katrina L. Dunderdale (“ALJ Dunderdale”) with respect to the \$100 civil penalty imposed for each violation of 66 Pa.C.S. § 1101. In his response to I&E’s Complaints docketed at

¹ I.D. at 18-19.

² *Id.*

C-2016-2545901 and C-2016-2554744, Respondent admitted to offering to provide uncertificated passenger transportation service,³ and the ALJ correctly found that Respondent violated 66 Pa.C.S. § 1101 on two (2) separate occasions, but reduced the fine to a mere \$100 per violation. It is I&E's position that the Code, the Commission's Motor Carrier Penalty Guidelines, and the ALJ's own analysis of Respondent's misconduct by a review of each of the ten *Rosi*⁴ standards supports the imposition of the total civil penalty of \$2,000 sought in the Complaints. If the Commission denies I&E's Exceptions and does not modify the ALJ's I.D., this will send the wrong message to other uncertificated carriers that they can repeatedly ignore the law and the Commission's regulations at the public's peril, admit to the violations, and receive no more than a slap on the wrist. Fines such as those imposed by the ALJ in this case will deter no one, especially not repeat offenders.

II. BACKGROUND

On May 19, 2016, I&E filed a Complaint ("First Complaint") against Respondent at Docket No. C-2016-2545901 after Respondent agreed to transport PUC Enforcement Officer Ryan Balestra ("Officer Balestra") during a sting operation on May 13, 2016. Respondent agreed to transport Officer Balestra from the Amtrak Station on Liberty Avenue in Pittsburgh, Pennsylvania to the North Shore in Pittsburgh, Pennsylvania in Respondent's personal vehicle, a 2004 Saturn sedan bearing Pennsylvania license plate

³ See Respondent's Answers to I&E's Complaints.

⁴ The present standard for the imposition of a civil penalty was developed in *Rosi v. Bell-Atlantic - - Pennsylvania, Inc. and Sprint Communications, L.P.*, Docket No. C-00992409 (Order entered March 16, 2000) and is promulgated in a Policy Statement at 52 Pa. Code § 69.1201.

number JPE9928, for a fare of \$12. I&E's First Complaint alleged that Respondent violated Section 1101 of the Code, 66 Pa.C.S. § 1101, for holding himself out to provide passenger transportation service between points in Pennsylvania for compensation without first obtaining authority from the Commission. The First Complaint seeks a \$1,000 civil penalty and suspension of Respondent's vehicle registration by PennDOT.

In direct response to the allegations in I&E's First Complaint, Respondent filed a letter on June 16, 2016 that stated, in pertinent part, the following:

I am defenetely [sic] guilty of the motor vehicle infraction that happened on May 13, 2016. I humby [sic] ask that you show leniency in suspending my license. I was desperately in need of a few bucks is [sic] why I committed the infraction.

(emphasis added).

On August 10, 2016, I&E filed another Complaint ("Second Complaint") against Respondent at Docket No. C-2016-2554744 after Respondent was observed by Officer Balestra on June 4, 2016 operating the same vehicle, as referenced in I&E's First Complaint, with an illuminated taxi dome light on the dashboard of his vehicle, which displayed the word, "Yellow." I&E's Second Complaint alleged, among other things, that Respondent violated Section 1101 of the Code, 66 Pa.C.S. § 1101, again, for holding himself out to provide passenger transportation service between points in Pennsylvania without first obtaining authority from the Commission. The Second Complaint seeks a \$1,000 civil penalty and suspension of Respondent's vehicle registration by PennDOT.

In response to the allegations in I&E's Second Complaint, Respondent filed an Answer on September 8, 2016 that stated, in pertinent part, the following:

This is in response to me supposedly running a cab (Yellow) business team [sic] my house. Totally untrue **I admit too [sic] taking fare from casino to bus station** but I am not running an illegal Yellow Cab Service.

(emphasis added).

On May 16, 2017, the Office of Administrative Law Judge (“OALJ”) assigned the First Complaint to be heard by ALJ Mark A. Hoyer and assigned the Second Complaint to be heard by ALJ Katrina L. Dunderdale (“ALJ Dunderdale”). On May 16, 2017, OALJ issued a Hearing Notice which scheduled an Initial Hearing in the Second Complaint proceeding for July 11, 2017 before ALJ Dunderdale. On May 17, 2017, ALJ Dunderdale issued a Prehearing Order in the Second Complaint proceeding. By Interim Order dated May 25, 2017, ALJ Dunderdale ordered, *inter alia*, that I&E’s First and Second Complaints be consolidated, that the Initial Hearing scheduled in the Second Complaint proceeding be converted to a telephonic status conference for both complaints, and that I&E file a Certificate of Satisfaction or appropriate motion by July 5, 2017.

Due to the untimeliness of Respondent’s letter-responses to I&E’s First and Second Complaints and Respondent’s clear and direct admissions of guilt in response to both complaints, I&E filed a Motion for Default Judgment and Alternative Motion for Judgment on the Pleadings on July 5, 2017. Respondent failed to participate at the telephonic status conference on July 11, 2017⁵ and did not answer I&E’s Motion for Default Judgment and Alternative Motion for Judgment on the Pleadings. On September 14, 2017, OALJ issued the I.D. of the presiding ALJ.

⁵ I.D. at 4.

I&E's Exceptions follow.

III. 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. The Commission should exercise its powers under Section 335 of the Code and reject the I.D. regarding the imposition of the civil penalty as being too lenient for a repeat offender and contrary to the ALJ's own analysis of the *Rosi* standards.

IV. I&E EXCEPTIONS

A. The Public Utility Code and the Commission's Motor Carrier Penalty Guidelines Support the Imposition of a Civil Penalty of \$1,000 For Each Violation of 66 Pa.C.S. § 1101.

Section 3301(a) of the Code authorizes the Commission to impose a civil penalty of up to \$1,000 per violation of the Code, Commission regulation or order. 66 Pa.C.S. § 3301(a). Additionally, the Commonwealth Court has held that the Commission may

impose a civil penalty of up to \$1,000 for each and every discrete violation of the Code or regulation, regardless of the number of violations that occur.⁶ In assessing civil penalties for motor carrier complaints, the Motor Carrier Enforcement Division of I&E follows Commission-approved penalty guidelines. *See PUC Motor Carrier Services & Enforcement Penalty Guidelines*, effective April 1, 2011 (“Penalty Guidelines”) (attached as Attachment A). In this case, I&E followed the Penalty Guidelines in assessing a total civil penalty of \$2,000 against Respondent for offering to provide uncertificated passenger transportation service in violation of 66 Pa.C.S. § 1101 as set forth in the First and Second Complaints.

B. The Presiding ALJ’s Own Analysis of the *Rosi* Standards, Supports the Imposition of a Civil Penalty of \$1,000 For Each Violation of 66 Pa.C.S. § 1101.

For the reasons described in greater detail below, I&E respectfully submits that the presiding ALJ’s discussion of the factors used by the Commission to evaluate the appropriateness of a civil penalty in litigated and settled proceedings and the application of those factors to this case demonstrate that a total cumulative civil penalty of \$200 falls well short of the penalty warranted in this consolidated complaint proceeding.

Throughout her I.D., the ALJ described Respondent’s misconduct as “serious,”⁷ “willful,”⁸ “continuing,”⁹ and “intentional.”¹⁰ Yet, contrary to the presiding ALJ’s presumed appreciation for the gravity of the violations at issue, the ALJ concluded that

⁶ *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm’n*, 531 A.2d 85, 87 (Pa. Cmwlth. 1987).

⁷ I.D. at 13.

⁸ *Id.* at 14.

⁹ *Id.*

¹⁰ *Id.*

the aggregate civil penalty of \$2,000 was “fool-hardy and potentially draconian.”¹¹ I&E submits that Respondent’s repeated misconduct flies in the face of the Code and the Commission’s regulations and is a disservice not only to the public, who take for granted the many safeguards provided through such a regulated service, but also to many certificated carriers that conduct their business in the Commonwealth in a lawful manner. Respondent repeatedly held himself out to render public utility service without Commission oversight, which is designed to protect public safety and he did this knowingly. Respondent continued a course of misconduct that he knew to be illegal. Therefore, I&E submits that the aggregate civil penalty of \$2,000 sought by I&E is appropriate when considering the *Rosi* standards and even the ALJ’s own analysis of those standards in this matter.

The Commission promulgated a Policy Statement¹² at 52 Pa. Code § 69.1201 as a guideline that sets forth ten factors that are to be considered when evaluating whether and to what extent a civil penalty for violating a Commission order, regulation or statute is warranted.¹³ While these factors are evaluated for both litigated and settled proceedings involving violations of the Code and Commission regulations, Section 69.1201(b) of the Policy Statement notes that these factors and standards are applied in a more strict fashion in a litigated proceeding and without the flexibility afforded in a settled proceeding. 52 Pa. Code § 69.1201(b).

¹¹ *Id.* at 16.

¹² A policy statement does not establish a “binding norm,” but announces the agency’s tentative intentions for the future. *Pa. Human Relations Comm’n v. Norristown Sch. Dist.*, 374 A.2d 671, 679 (Pa. 1977).

¹³ These factors and standards are hereinafter referred to as the *Rosi* factors.

Although this matter was not a litigated or settled proceeding, the presiding ALJ evaluated each of the ten factors in relation to the pleadings submitted in the case. The ALJ's analysis supports a civil penalty greater than \$100 per violation as the ALJ repeatedly found in her review that a "greater penalty" was warranted.¹⁴ However, the ALJ imposed a minimal per violation civil penalty of only \$100.¹⁵

For example, in evaluating the first factor pursuant to 52 Pa. Code § 69.1201(c)(1) related to whether the conduct at issue was of a serious nature, the presiding ALJ correctly concluded that Respondent's conduct of offering to provide uncertificated passenger transportation service was of a **serious** nature as defined by the Commission's Policy Statement.¹⁶ The ALJ even went on further to conclude that because Respondent admitted in both Complaints that he offered transportation for compensation, Respondent "engaged in **willful** misconduct" and that the conduct of Respondent should result in a greater penalty.¹⁷ The Commission made the same conclusion in *Pa. Pub. Util. Comm'n v. Brungard*, where it held that "[t]he **continued** holding out of possessing authority to provide intrastate transportation services and providing these services, without possessing a certificate of public convenience, are **unquestionably serious offenses** within our direct jurisdiction to penalize pursuant to the Code." 97 Pa. P.U.C. 189 (Order entered June 3, 2002) (emphasis added).

¹⁴ I.D. at 14-15.

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 13-14 (emphasis added).

When evaluating whether the resulting consequences of Respondent's misconduct were of a serious nature pursuant to 52 Pa. Code § 69.1201(c)(2), the presiding ALJ correctly determined that Respondent "**willingly and knowingly** disregarded the regulations."¹⁸ Nevertheless, the ALJ found that since the complaints do not indicate any consequences of Respondent's violations, such as personal injury or property damage, a lesser civil penalty is warranted.¹⁹ I&E submits that the possibility of serious consequences cannot be properly gauged because Respondent's uncertificated activity deprived the Commission of any ability to oversee his operations in terms of insurance, driver history, and vehicle safety. The Commission has no means to determine whether personal injury or property damage occurred, such as through the notification and record keeping requirements set forth in 52 Pa. Code § 29.44, because Respondent does not report his activity to the Commission. Therefore, the consequence of Respondent's conduct reaches the point of seriousness because of Respondent's failure to seek approval from the Commission to lawfully operate as a motor carrier.

Regarding the third factor, which considers whether the conduct at issue was intentional or negligent pursuant to 52 Pa. Code § 69.1201(c)(3), the presiding ALJ appropriately found that Respondent's misconduct was intentional and that Respondent's intentional conduct should result in a greater penalty.²⁰ Significantly, the presiding ALJ stated that:

¹⁸ I.D. at 14 (emphasis added).

¹⁹ *Id.*

²⁰ *Id.*

Respondent **knew** in May 2016 that his actions were a violation plus the allegations in the Second Complaint indicate **continuing intentional** conduct.²¹

Regarding the fourth factor at 52 Pa. Code § 69.1201(c)(4), which concerns any remedial actions taken by Respondent, the presiding ALJ correctly concluded that Respondent **failed to take any remedial actions** and that such should result in a greater penalty.²² I&E submits that Respondent has continued to engage in behavior that shows a callous disregard to the statutes and regulations of the Commission and the Commonwealth. Not only did Respondent continue a pattern of conduct that he knows to be illegal, Respondent failed to update his address with the Commission during this proceeding²³ as required by 52 Pa. Code § 1.24(a), ignored the notices advising him to participate in the telephonic status conference held in this matter, and failed to reply to I&E's Motion for Default Judgment and Alternative Motion for Judgment on the Pleadings. Therefore, Respondent has not made any effort to modify his internal practices and procedures.

The fifth factor considers the number of customers affected and the duration of the violation, pursuant to 52 Pa. Code § 69.1201(c)(5). In addressing the duration of Respondent's misconduct, the ALJ described Respondent's conduct as "ongoing" since Respondent continued to offer transportation services for compensation after receiving notice of the first citation.²⁴ Due to the ongoing nature of Respondent's misconduct, the

²¹ *Id.* (emphasis added).

²² *Id.*

²³ *Id.* at 8.

²⁴ *Id.* at 14.

ALJ concluded that a higher civil penalty was warranted.²⁵ I&E submits further that because Respondent does not report his activity to the Commission, it is unknown how long Respondent has been holding himself out to provide passenger transportation service, how many unauthorized trips that Respondent provided, and how many customers have paid Respondent in exchange for passenger transportation service.

The sixth factor at 52 Pa. Code § 69.1201(c)(6) is a consideration of the Respondent's compliance history. The presiding ALJ improperly found that Respondent does not have a compliance history since he is not a regulated entity and that due to the absence of any violations prior to May 13, 2016, a lesser civil penalty is warranted.²⁶ I&E submits that in considering this factor, the ALJ focused solely on the compliance history of Respondent prior to May 13, 2016, and failed to take note of Respondent's subsequent misconduct on June 4, 2016 which is also at issue in this matter. Moreover, because Respondent does not report his activity to the Commission, it is unknown how long Respondent has been non-compliant in holding himself out to provide passenger transportation service without a Certificate of Public Convenience and therefore, Respondent's compliance history cannot be properly gauged. At best, this factor should be deemed inapplicable, rather than justifying a lesser civil penalty as the ALJ concluded. To proclaim that a lesser penalty is warranted because the illegal service has circumvented the Commission's regulatory authority defies logic.

²⁵ *Id.*

²⁶ *Id.* at 15.

When evaluating the seventh factor pursuant to 52 Pa. Code § 69.1201(c)(7), the presiding ALJ found that Respondent **failed to cooperate** with the Commission as he failed to cease from engaging in unauthorized conduct and that Respondent's failure to cooperate should result in a greater penalty.²⁷ Not only has Respondent repeatedly violated the Code and admitted to doing so, Respondent has been unresponsive throughout all stages of the instant proceeding, with the exception of Respondent's untimely letter-responses to I&E's First and Second Complaints. Respondent failed to update his address with the Commission during the course of this proceeding, participate in the telephonic status conference held in this matter, and reply to I&E's Motion for Default Judgment and Alternative Motion for Judgment on the Pleadings and correspondence from I&E.

The eighth factor at 52 Pa. Code § 69.1201(c)(8) considers the amount of the fine or civil penalty necessary to deter future violations. The ALJ found that "given the circumstances of this proceeding" a civil penalty is warranted, however, a civil penalty as large as that sought by I&E is "unnecessary."²⁸ The ALJ provided no elaboration on what circumstances of the proceeding justifies a lower civil penalty than that requested by I&E. I&E sought a \$1,000 per violation civil penalty, which is the standard penalty that I&E seeks when a motor carrier operates without authority from the Commission.²⁹ The civil penalty of \$1,000 that I&E requested in its First Complaint was not sufficient to

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See* Penalty Guidelines.

induce Respondent to cease and desist from his misconduct as Respondent was cited for the same offense the following month in June 2016. Therefore, Respondent's conduct in offering uncertificated passenger transportation service is a recurring event. I&E submits that a reduced civil penalty will not suffice in sending a message to deter the unlawful behavior of Respondent.

In evaluating the ninth factor at 52 Pa. Code § 69.1201(c)(9) regarding previous Commission decisions in similar situations, the presiding ALJ mentions that she "found a few Commission decisions that provide some guidance," but cites to only one case, *Pa. Pub. Util. Comm'n v. Pierce*, Docket No. C-2012-2318094 (Order entered March 26, 2013).³⁰ The ALJ found *Pierce* similar to the instant matter because the *Pierce* case went before the Commission on a motion for default judgment and "the Commission authorized a civil penalty without conducting a hearing on what is an appropriate penalty for the underlying violation."³¹

In *Pierce*, the Commission granted I&E's motion for default judgment against a certificated limousine carrier that failed to pay its assessment of \$222 to the Commission and ordered that the respondent pay its outstanding assessment and the requested civil penalty of \$30, or approximately 15% of the respondent's outstanding assessment balance.³² When determining the appropriate civil penalty to be imposed, the presiding ALJ in *Pierce* found that the respondent's conduct and the resulting consequences of

³⁰ I.D. at 15.

³¹ *Id.*

³² *Pierce*, Docket No. C-2012-2318094 (Order entered March 26, 2013).

such were not of a serious nature and that the civil penalty requested by I&E was consistent with a civil penalty that was recently imposed by the Commission in another case involving a delinquent assessment.³³

Although the *Pierce* case may be procedurally similar to the instant matter, both cases are factually different and therefore, a comparison of *Pierce* to the present case is misplaced. The instant matter involves a repeated holding out to provide uncertificated passenger transportation service for compensation, which the presiding ALJ described as “serious,”³⁴ “willful,”³⁵ “continuing,”³⁶ and “intentional,”³⁷ yet still imposed a minimal civil penalty of \$100 per violation instead of the standard per violation civil penalty of \$1,000.

Indeed, a review of past Commission decisions factually and procedurally similar to the instant matter shows that I&E has consistently sought a \$1,000 per violation civil penalty in its complaints involving uncertificated passenger transportation service in accordance with Section 3301 of the Code, 66 Pa.C.S. § 3301, and the Penalty Guidelines. In previous cases involving uncertificated passenger transportation service, the Commission also ordered the imposition of the standard \$1,000 civil penalty for each violation of 66 Pa.C.S. § 1101 **without first conducting a hearing**. See, e.g., *Pa. Pub. Util. Comm'n v. Alsoud*, Docket No. C-2016-2505103 (Order entered March 7, 2017); *Pa. Pub. Util. Comm'n v. Major Tours, Inc.*, Docket No. C-2013-2330610 (Order entered

³³ *Id.*

³⁴ *I.D.* at 13.

³⁵ *Id.* at 14.

³⁶ *Id.*

³⁷ *Id.*

April 10, 2013); *Pa. Pub. Util. Comm'n v. Felicity*, Docket No. C-2011-2203196 (Order entered June 10, 2011); *Pa. Pub. Util. Comm'n v. Transit Aide, Inc.*, Docket No. C-2010-2187719 (Order entered February 10, 2011); *Pa. Pub. Util. Comm'n v. Pennysaver Direct, Inc.*, Docket No. C-2010-2157952 (Order entered January 27, 2011); *Pa. Pub. Util. Comm'n v. AVP Transport, Inc.*, Docket No. A-00114699C0701 (Order entered September 17, 2007); *Pa. Pub. Util. Comm'n v. Foundry Service Corporation*, Docket No. A-00096858C0701 (Order entered October 11, 2007);

Additionally, in prior litigated cases involving uncertificated passenger transportation service, the Commission imposed the standard civil penalty of \$1,000 or more after conducting a hearing. *See, e.g., Pa. Pub. Util. Comm'n v. Cintron*, Docket No. C-2015-2473286 (Order entered February 1, 2016); *Pa. Pub. Util. Comm'n v. Applegate*, Docket No. C-2015-2451749 (Order entered May 23, 2016). In the *Applegate* case, the Commission adopted the presiding ALJ's I.D. that ordered the respondents to pay a \$5,000 civil penalty for holding themselves out to provide uncertificated passenger transportation service in violation of 66 Pa.C.S. § 1101, which was five times the amount of the requested civil penalty. Docket No. C-2015-2451749 (Order entered May 23, 2016).

The tenth factor considers other relevant factors. 52 Pa. Code § 69.1201(c)(10). The presiding ALJ concluded that Respondent's answers demonstrate that Respondent is short of financial resources and that to issue such a large civil penalty and suspend the

vehicle registration of someone who must drive for his employment is too severe.³⁸ Thus, the ALJ found that such factors mitigate in favor of a lesser civil penalty.³⁹ I&E submits that the averments that Respondent advanced in his answers were not made under oath and should not be given the same weight as sworn, testimonial evidence. Further, due to Respondent’s failure to participate in this proceeding, I&E was unable to cross-examine Respondent with respect to the claims averred in his answers. I&E submits that Respondent’s socio-economic status should not be presumed or negate his deliberate, illegal, and repeated misconduct.

The below chart summarizes the conclusions of the presiding ALJ regarding each *Rosi* factor.

Factor	ALJ’s Conclusion
§ 69.1201(c)(1) – Whether conduct was of a serious nature.	Yes; results in a greater penalty. I.D. at 14.
§ 69.1201(c)(2) – Whether resulting consequences of Respondent’s conduct at issue were of a serious nature.	Respondent willingly and knowingly disregarded the law, but no personal injury or property damage resulted; mitigates for a lesser penalty. I.D. at 14.
§ 69.1201(c)(3) – Whether conduct was deemed intentional or negligent.	Yes; continuing and intentional conduct; results in a greater penalty. I.D. at 14.
§ 69.1201(c)(4) – Whether Respondent made any effort to modify internal practices and procedures.	No remedial actions taken; results in a greater penalty. I.D. at 14.
§ 69.1201(c)(5) – The number of customers affected and the duration of the violation.	No customers affected is outweighed by ongoing nature of the violations; results in a greater penalty. I.D. at 14.
§ 69.1201(c)(6) – Respondent’s compliance history.	No violations prior to May 2016 and unregulated entity does not have a compliance history; mitigates for a lesser penalty. I.D. at 15.

³⁸ I.D. at 16.

³⁹ *Id.*

§ 69.1201(c)(7) – Whether the regulated entity cooperated with the Commission’s investigation.	No; failed to cease from engaging in unauthorized conduct; results in a greater penalty. I.D. at 15.
§ 69.1201(c)(8) – The amount of the civil penalty or fine necessary to deter future violations.	Circumstances of the proceeding warrant a civil penalty, but penalty as large as requested penalty is unnecessary. I.D. at 15.
§ 69.1201(c)(9) – Past Commission decisions in similar situations.	Under the circumstances of the proceeding, a more appropriate civil penalty is \$100 per violation. I.D. at 15.
§ 69.1201(c)(10) – Other relevant factors.	Respondent’s answers indicate he is short of financial resources and must drive for his employment. I.D. at 16.

When the ALJ’s analysis of each *Rosi* factor is read together, the resulting conclusion is that Respondent’s misconduct is more deserving of the civil penalty sought by I&E. Indeed, the ALJ found that half of the *Rosi* factors were aggravating and warrant the imposition of a greater civil penalty.⁴⁰ Yet, the presiding ALJ determined that a civil penalty in the amount of \$100 per violation was appropriate. A civil penalty in the amount of \$100 per violation equals a mere 10% of the maximum per violation civil penalty and is not supported by recent Commission decisions or the presiding ALJ’s own analysis of Respondent’s misconduct. A civil penalty in the amount of \$100 per violation is not moderate and is *far* less than the maximum allowable civil penalty per violation of \$1,000.

It appears that the presiding ALJ determined that a total civil penalty in the amount of \$200 is appropriate based solely on Respondent’s unsworn and unsubstantiated claims regarding his financial resources and employment. Thus, there

⁴⁰ *Id.* at 14-15.

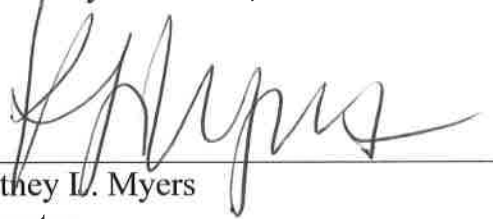
appears to be a disconnect between the presiding ALJ's analysis of the *Rosi* factors (where a higher civil penalty is found to be warranted) and the resulting minimal per violation civil penalty reached in the I.D.

The Public Utility Code, the Commission's Motor Carrier Penalty Guidelines, and the presiding ALJ's own analysis support the imposition of the requested civil penalty of \$2,000 due to the many aggravating factors of Respondent's willful and intentional conduct in repeatedly holding himself out to provide uncertificated passenger transportation service for compensation.

V. CONCLUSION

For the reasons set forth above, I&E respectfully submits that a civil penalty of \$1,000 per violation, for a total civil penalty of \$2,000, is warranted.

Respectfully submitted,



Kourthey L. Myers
Prosecutor
PA Attorney ID No. 316494

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

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Pennsylvania Public Utility Commission
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Dated: October 4, 2017

ATTACHMENT A

PENALTY GUIDELINES

PUC Motor Carrier Services & Enforcement

(\$10,000 cap on complaints, unless safety related)
(fine amount format)

Certificate Cancellation plus \$1000 per violation per day
(this is the maximum fine permitted)

Operating while certificate is under suspension –
when a lapse in insurance coverage occurred.

52§32.2, 52§32.11, 66§501(c)

Certificate Cancellation plus \$500

Failure to file evidence of insurance –
no evidence of operating during suspension.

52§32.2, 52§32.11

Failure to pay past due fines.

66§501(c)

Failure to pay past due assessments.

66§510

Certificate Cancellation plus \$250

Failure to submit to SFR.

66§501(c) & 66§1501

Certificate Cancellation

Abandonment of service.

52§3.381(a), 66§1102(a)(2)

Failure to pass Safety Fitness Review.

66§501(c) & 66§1501

Failure to file tariff with rates based on: Meter – Taxis
Time – Limos
(after one complaint adjudication for same violation)

52§29.314(b)(6)
52§29.334

PENALTY GUIDELINES

(continued)

\$1000 per violation

All Critical* violations found during Bus/Truck Audits
(plus cancellation if over \$10,000)

False documentation to cover violations.	Logs - Receipts - Character -	52 §29.313(c) 52 §29.313(f) 66 §1501
Operating without holding a certificate of public convenience. (Maximum \$1,000 per complaint) (The carrier's vehicle registration will also be suspended by PDOT.)		66§1101
Disqualified driver operated a vehicle. (convicted of felony or misdemeanor relating to Suitability to provide safe and legal service).		52§29.505(c)
Disqualified hhgs worker.		52§31.134(c)
Controlled substance/alcohol found during roadside inspections or investigations.	Alcohol Controlled Substance	52§29.506 52§29.507
Household Goods violations – Failure to relinquish goods upon payment of estimate + 10% or \$25.		52§31.123
Disqualified employee (convicted of felony or misdemeanor relating to suitability to provide safe & legal service) packed/unpacked, loaded/unloaded, or operated a vehicle.		52§31.134(c)
Unauthorized transportation (service type violation only; Example - limos performing taxi service).	All types. Limo as taxi – no advance order for service. Limos soliciting passengers. Meter in limo.	66§1102 52§29.332(1) 52§29.332(3) 52§29.334
Household goods carriers - no weight tickets for moves over 40 miles – if found arising from a consumer complaint about overcharge.		52§31.125
Operating Out-Of-Service vehicle before being repaired.		52§29.406(e)
No meter in taxi. Inoperative meter.		52§29.314(b)(1) 52§29.314(b)(7)

* Critical Violations are those which pose an imminent hazard and have the greatest potential to cause or contribute to an accident.

PENALTY GUIDELINES

(continued)

\$500 per violation per day

Operating while under suspension for insurance – no lapse in coverage.		52§32.2, 52§32.11, 66§501(c)
Any refusal of service.		52§29.313(a)
Lack of control of transportation (leasing authority to others or to drivers).	passenger, except taxi taxi	52§29.101(a)(5) 52§29.101(f)(2)(i)
Inadequate, unreasonable service – major violations: (not showing up, more than ½ hr late, etc. – fine will be \$500). (for minor violations of unreasonable, unsafe service: smoking, unsafe cell phone usage while customer in vehicle, etc. – fine will be \$250).		66§1501 66§1501
All Serious** violations (except hrs of service) found during Bus/Truck Audits.		
Tariff overcharge violation. (No refunds ordered under \$10) (if an audit – undercharge violations due to fuel surcharge, one fine for entire audit) See \$250 page also.	All types PT Taxi GP AT HHG	66§1303 52§29.255 52§29.314(b)(6) & 29.316 52§29.324 52§29.343 52§31.27
Failure to cooperate with an officer's investigation. Each day is a separate violation, with a maximum penalty of \$10,000/month of not producing documents requested during investigation or refusing to allow investigation. (20 working days x \$500)		66§505
Void in service longer than 5 days w/o notifying Commission.		52§29.62
False Record of Duty Status violations found on random inspections or investigations.		52§29.508 (a)(2)
Unauthorized transportation (outside area).		66§1102
Over-aged vehicle.	Taxi Limo	52§29.314(d) 52§29.333(e)

** Serious Violations are those which indicate the carrier has ineffective safety management controls and/or regulatory non-compliance problems attributing a high probability to cause or contribute to an accident.

PENALTY GUIDELINES

(continued)

\$250 per violation

Hours of Service violations (4 or more) found during Bus/Truck Audits.

Tariff undercharge violations (except limousines or GP-15). ***	All types.	66§1303
	PT	52§29.255
	Taxi	52§29.314(b)(6) & 29.316
	AT	52§29.343
	HHG	52§31.27

Taxi – no tariff submitted with rates based on meter.	52§29.314(b)(6)
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Limos charging rates other than those based on time OR no tariff submitted with rates based on time.	52§29.334
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Invalid State Inspection.	52§29.405
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No dome light on taxi. (see pg 5 for non-illuminated dome light)	52§29.314(e)
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No criminal history record on driver. (see next page for no current criminal history record and for no driver history record)	52§29.505(a)
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Household Goods Carriers Violations:

Information for Shippers not provided to shipper 48 hours prior to move.	52§31.121(c)
Estimated Cost of Service not provided to shipper 48 hours prior to move.	52§31.122(a)
Bill of Lading not provided to shipper within 15 days of move.	52§31.132(b)
Insurance Claim violations.	52§32.16
No criminal history record on employees. (see next page for no current criminal history record)	52§31.134(a)

Failure to File Assessment Report.	66§510(b)
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No vehicle list filed. (See next page for list filed with missing info)	Taxi	52§29.314(c)
	Limo	52§29.333(d)

***Note to Specialist: To impose a penalty, the undercharge must be more than 10% and an informal complaint investigation or audit must have been involved.

PENALTY GUIDELINES

(continued)

\$200 per violation

Operating while driver's motor vehicle license is under suspension, revoked or expired. 52§29.502 & 75§1543(a)

\$100 per violation

Tariff undercharges***.	All types.	66§1301
	GP 11-15	52§29.324
	Limo	52§29.334

Non-illuminated dome light when required or dome light not visible from 100 ft front and rear (example: obscured by ad) - (taxi) 52§29.314(e)

No driver history obtained. 52§29.504
 No **current** criminal history obtained. 52§29.505(b) or (a) if initial one

Hours of Service violations (1-3) found during Bus/Truck Audits.

Minor**** violations (1st group of 3 + each subsequent violation) found during Bus/Truck Audits.

Out of Service***** Safety violations 67§229.16 or 231.9
 (one fine per type of violation per vehicle). (Example: door violation)

Non-Out of Service***** Safety violations (1st group of 5). 67§229.14 or 231.7

Exception: no Medical Certificate or expired - \$100 each	52§29.508(a)(1) & 52§37.204(3)	
	Who must have one	49CFR§391.45(b)
	May not operate	49CFR§391.41(a)

Vehicle list missing required information. (See previous page for NO vehicle list filed)	Taxi	52§29.314(c)
	Limo	52§29.333(d)

***Note to Specialist: To impose a penalty, the undercharge must be more than 10% and an informal complaint investigation or audit must have been involved.

**** Minor Violations are those which indicate the carrier has ineffective safety management controls or regulatory non-compliance problems. Example: failing to maintain a driver qualification file on each driver employed containing each of the items required for the specified time period.

***** The OOS Criteria for small vehicles is based upon the rejection criteria from the PA DOT's Vehicle Equipment and Inspection standards, 67 Pa. Code §175.

PENALTY GUIDELINES

(continued)

\$100 per violation (continued)

Household Goods Carriers -

Information for Shippers -	not retained by carrier	52§31.121(b)
	no shipper signature	52§31.121(a)
	Commission supplied form not used	52§31.121(a)
Estimate -	not maintained by carrier	52§31.122(b)
	required information missing	52§31.122(a)
Underestimate Report -	not filed	52§31.124
No weight tickets for moves over 40 miles (if violation found during audit)		52§31.125
Inventory list or waiver -	not prepared before shipment loaded (under 40 miles)	52§31.133(b)
No current criminal history record on employee.		52§31.134(b)

*****Passenger Service vehicle violations.

Unclean vehicle	52§29.403(2)
No heater	52§29.403(3)
Unsuitable/unclean trunk	52§29.403(4)
Dents/gouges exterior	52§29.403(6)
Unmatched wheel covers	52§29.403(7)
No air conditioning	52§29.403(8)
Damaged/unsecured seats	52§29.403(9)

Shortest practical route not used. 52§29.313(b)

Under-age driver. 52§29.503

***** One fine per type of violation per vehicle on random inspections, one fine per violation for entire fleet on annual inspections.

PENALTY GUIDELINES

(continued)

\$50 per violation

Non-OOS safety violations (6th or more).

*****Markings violations.

Passenger
Property

52§29.71
52§31.33

Advertising not on roof.

52§29.402(3)

Certificate # not on advertisement.

52§21.2

*****Administrative violations.

Logs - taxi

52§29.313(c)

Trip sheet - limo

52§29.335

Lease – passengers

52§29.101(b)(2)

Lease – property

52§31.32(c)(2)(vii)

Receipt – taxi

52§29.313(f)

Fare posting – taxi

52§29.316(c)

Consumer info

Decal

taxi

52§29.318

Decal or receipt

scheduled route

52§29.306

Decal or receipt

airport transfer

52§29.344

Decal or receipt

paratransit

52§29.356

Decal, receipt or contract

limo

52§29.336

***** One fine per type of violation per vehicle on random inspections, one fine per violation for entire fleet on annual inspections.

NOTE: All fines are doubled if the same safety violation is found during another inspection before it has been corrected.

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :

v. :

Stanley Lampkin, :
Respondent :

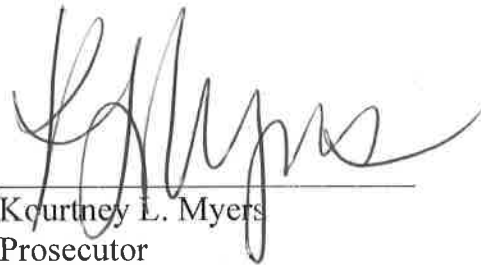
Docket Nos. C-2016-2545901
C-2016-2554744

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:

Stanley Lampkin
1821 Park Line Drive
Apt 34
Pittsburgh, PA 15227



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Harrisburg, PA 17105-3265
(717) 705-4366
komyers@pa.gov

Dated: October 4, 2017