

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Friedman Wagner-Dobler

v.

Rasier-PA, LLC
d/b/a Uber

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C-2017-2593690

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision sustains a formal complaint filed with the Pennsylvania Public Utility Commission by Friedman Wagner-Dobler against Rasier-PA, LLC, d/b/a Uber, alleging Respondent overcharged him for rides and charged him for rides of longer distances than Respondent provided.

HISTORY OF THE PROCEEDING

On March 14, 2017, Friedman Wagner-Dobler (Complainant or Mr. Wagner-Dobler) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Rasier-PA, LLC, d/b/a Uber (Rasier or Respondent) alleging Rasier overcharged him for rides in February and March of 2017. Mr. Wagner-Dobler requested a refund, in addition to an audit of his past trips, an audit of all Rasier trips to all consumers in

Pennsylvania, and that the Commission order Rasier to correct its algorithms used to calculate the fares it charges.¹

On March 16, 2017, the Commission issued a Secretarial Letter to Rasier which notified Respondent that a formal complaint had been filed against it. The Secretarial Letter was sent to Rasier by certified mail, return receipt requested, to 114 South 13th Street, Third Floor, Philadelphia, Pennsylvania 19107. Service of the Secretarial Letter upon Rasier was certified as delivered to Rasier's place of business by the United States Postal Service on March 20, 2017 at 1:48 p.m.

On July 17, 2017, the Office of Administrative Law Judge (OALJ) issued a Call-In Telephone Hearing Notice scheduling an initial telephonic hearing to be conducted on Monday, August 28, 2017 at 10:00 a.m. On July 18, 2017, the presiding officer issued the Prehearing Order which, *inter alia*, informed the parties about various administrative procedures.

On August 7, 2017, a Notice of Appearance was filed with the Secretary's Bureau by Alan M. Seltzer, Esq., John F. Povilaitis, Esq., and Brian C. Wauhop, Esq. of Buchanan Ingersoll & Rooney, PC, on behalf of Respondent, Rasier.

On August 9, 2017, Rasier filed a letter asking for a continuance in excess of two months because Rasier recently had engaged the law firm to represent it. Counsel alleged more time was needed to investigate the complaint, engage in settlement negotiations with Complainant, and prepare for the hearing. Rasier indicated Complainant agreed to continue the hearing. Counsel indicated in its letter that granting a continuance was in the best interest of both parties because it would allow for the most efficient possible resolution.

On August 10, 2017, the presiding officer issued the First Interim Order which granted the request to continue the initial telephonic hearing, denied the request for two additional months, and ordered the initial telephonic hearing should be conducted during the

¹ At the initial hearing, Complainant limited his request to include a request for refunds, and that Rasier change its calculator so charges are consistent among trips. He elected not to discuss the algorithm or to request revocation of Rasier's license.

week of September 24, 2017. On August 11, 2017, the Office of Administrative Law Judge (OALJ) issued a Call-In Telephone Hearing Notice scheduling an initial telephonic hearing to be conducted on Thursday, September 28, 2017 at 10:00 a.m.

On September 22, 2017, Respondent filed a Motion for Entry of a Procedural Order Setting a Case Management Schedule. The Motion did not indicate if Complainant specifically concurred with the requests in Rasier's Motion. In its Motion, Respondent averred it paid refunds to Complainant for his claims that Rasier charged him excessive amounts for rides Rasier provided in February and March of 2017 in an attempt to resolve the dispute.

Rasier argued in its Motion that the remaining issues in the formal complaint may be resolved by preliminary motion on the grounds the Commission lacked jurisdiction over transportation network company charges under Act 164. Rasier requested the initial telephonic hearing scheduled for September 28, 2017 be converted into an initial prehearing conference. As an alternative, Rasier asked the presiding officer to cancel the initial telephonic hearing and to institute a procedural schedule. Rasier proposed a full litigation schedule that would conclude with an initial hearing to be conducted on Saturday, December 16, 2017.

On September 25, 2017, Complainant sent a response via electronic mail, entitled "Response to Respondent's Motion of 22 September," and averred Rasier violated Act 164 of Chapter 57A17(a) which requires a transportation network company to "disclose the fare or fare calculation method prior to a prearranged ride and shall provide an estimate for the cost of a trip upon request." Complainant contended the Commission has jurisdiction over whether a transportation network company complies with the provisions of Act 164.

On September 25, 2017, the presiding officer issued the Second Interim Order denying Respondent's request to change the Initial Call-In Telephonic Hearing into a prehearing conference.

At 4:29 p.m. on September 26, 2017, Respondent electronically filed with the Commission's Secretary's Bureau a Motion for Leave to File Answer *Nunc Pro Tunc*. At the

same time, Rasier electronically filed an Answer. In the Motion, Rasier requested the Commission grant it the opportunity to file its Answer *Nunc Pro Tunc* and any other relief as deemed appropriate because Rasier could not determine if it received the formal complaint. Rasier contended it did not know a formal complaint was filed against it until the Commission mailed the Call-In Telephone Hearing Notice. Rasier insisted it had engaged legal counsel to represent it in August 2017, as soon as it learned there was a scheduled initial hearing.

On September 27, 2017, the presiding officer issued the Third Interim Order, which denied Rasier's request to convert the initial hearing into a prehearing conference, and which struck from the hearing record the Answer of Rasier filed on September 26, 2017 because Rasier had not shown that good cause existed to grant it leave to file the Answer late.²

On September 28, 2017, the presiding officer convened the initial telephonic hearing as scheduled. Complainant appeared *pro se*. Respondent was represented by John F. Povilaitis, Esquire. Complainant presented testimony from himself but did not offer any exhibits. Respondent presented the testimony of one witness but did not offer any exhibits. Complainant and Respondent issued final statements on the hearing record. Prior to concluding the hearing, Respondent requested permission to file briefs, and Complainant agreed he would like the same opportunity.

On November 1, 2017, the presiding officer received the transcript consisting of 113 pages. On November 2, 2017, the presiding officer inadvertently issued an Interim Order which closed the hearing record, instead of establishing a briefing schedule, as requested by the parties. Accordingly, the presiding officer issued the Post-Hearing Interim Order on November 7, 2017 to re-open the hearing record and provide the parties with a briefing schedule.

The presiding officer issued the Second Post-Hearing Interim Order on December 19, 2017, closing the hearing record, after receiving position statements from the parties.

² Pursuant to 52 Pa.Code § 5.61(c), a respondent may be deemed in default if it fails to file an answer within the applicable period, and relevant facts stated in the pleadings may be deemed admitted.

FINDINGS OF FACT

1. Complainant, Friedman Wagner-Dobler, has resided in Pittsburgh, Pennsylvania since 2001 and works at NetApp in Cranberry, Pennsylvania. (Tr. 16, 17, 50).
2. Respondent, Rasier-PA, LLC, d/b/a Uber is a public utility providing ride services to customers using a website-based application that permits riders to request transportation between two points. (Tr. 61-63).
3. Complainant has been a customer of Respondent since Respondent began providing service where Complainant works and lives. (Tr. 17).
4. From mid-February through March of 2017, Complainant required physical therapy due to recent arm surgery which also prevented him from being able to drive his personal vehicle. (Tr. 17, 18).
5. While receiving therapy for his arm, Complainant attended physical therapy during the workday approximately one day per week. (Tr. 19).
6. Complainant relied on Rasier to drive him from his workplace in Cranberry, Pennsylvania to the Lemieux Center in Cranberry, Pennsylvania, where Complainant received physiotherapy services, and to return him to his workplace during the workday. (Tr. 17).
7. The distance from Complainant's workplace to the Lemieux Center is 1.5 miles. (Tr. 20).
8. Rasier shows the estimated charge on its website for a trip before a customer can accept the price and request the service, and Rasier will not change the price quoted except for realtime market dynamics such as surge pricing. (Tr. 62, 66, 87).

9. If a Rasier driver uses a shortcut not included in the original estimate which results in a trip that is shorter in time and distance than originally estimated on Rasier's website, then Respondent will charge the rider the higher-quoted price. (Tr. 90-95).

10. If road conditions, such as a traffic jam, result in a trip that is longer in time and distance than originally estimated on Rasier's website, then Respondent will charge the lower-quoted price. (Tr. 90-95).

11. On February 24, 2017, March 10, 2017, and March 13, 2017, Rasier transported Complainant from his workplace to therapy and charged Complainant approximately \$18 to \$20 for each trip. (Tr. 35-40).

12. On all other trips provided by Rasier between Complainant's workplace and the Lemieux Center for therapy, Rasier charged Complainant approximately \$7. (Tr. 34).

13. Sometimes when Complainant checked the estimated price for the 1.5 miles trip from his workplace to his therapy place, Rasier's website estimated the charge would be approximately \$7. (Tr. 35-55).

14. After the first initial trips, Complainant did not always remember to check the estimated charges on Rasier's website to see if the estimate was only \$7 or was listed as \$18 to \$20. (Tr. 35-55).

15. When Complainant input the addresses for pick-up and delivery, Rasier's website might estimate the charge using the exact addresses, but sometimes it estimates the charge using a pick-up spot on a highway on-ramp nearby. (Tr. 79-81).

16. When Rasier's system erroneously determines an on-ramp is the starting point, the system estimates the cost for the trip based on the assumption Rasier's driver will continue to proceed on to the highway, travel to the next exit, exit the highway and then re-enter

the highway in the opposite direction and exit at the next off-ramp to the starting point. (Tr. 80-81).

17. Rasier's solution when the website application assumed a highway on-ramp is the pick-up point is that Complainant should have entered a slightly different address or used only the street name until the website application recalculates a different estimated charge. (Tr. 96).

18. Rasier's application provides the rider with a "fixed price" which, when accepted by the rider, will not increase even if a traffic jam lengthens the time of the ride, provided the pick-up and destination points remain unchanged. (Tr. 82, 90-95).

19. Rasier's website application and records do not save the estimated information and uses the actual trip data to charge riders. (Tr. 99).

20. Rasier charged Complainant for the three trips taken on February 24, 2017, March 10, 2017, and March 13, 2017 by assuming the trips would be significantly longer in time and distance than was necessary and longer than was provided. (Tr. 17-42).

21. After Complainant filed the formal complaint, Rasier refunded the difference in charges to Complainant for all the trips. (Tr. 46, 47, 65).

DISCUSSION

This formal complaint concerns whether Rasier violated Commission regulations or the Public Utility Code when Rasier charged Complainant for more transportation service than Rasier actually provided. The formal complaint does not concern the rate structure or any algorithms used by Rasier when calculating its charges.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof to show that he is entitled to the requested relief.³ To satisfy this burden, Complainant must show Respondent is responsible or accountable for the problem described.⁴ Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.⁵ Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁶ Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁷

Reasonable Customer Service

A violation of the Code may occur when a utility company fails to provide reasonable service, such as the failure to correctly charge a customer or notify a customer about what charges will apply prior to service. The Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities.⁸ The term "service" is "used in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under [the Public Utility Code]..."⁹ Thus a utility

³ 66 Pa.C.S.A. § 332(a).

⁴ Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).

⁵ Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

⁶ Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlth. 1982); Edan Transportation Corp. v. Pa. Pub. Util. Comm'n, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S.A. § 704.

⁷ Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa.Super. 1960); Murphy v. Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

⁸ Elkin v. Bell of Pa., 491 Pa. 123, 420 A.2d 371 (1980).

⁹ 66 Pa.C.S.A. § 102.

company's practice of how it charges customers for its service and when it may impose a higher charge, must be reasonable, adequate and sufficient.

Transportation Network Service

The Commission is authorized to regulate Rasier, as a Transportation Network Service (TNS), pursuant to 66 Pa.C.S.A. § 2601, *et seq.* Prior to accepting a ride, a TNS company must provide a potential customer with an estimate and notice if dynamic pricing is in effect.¹⁰ In addition, a TNS company is subject to the Commission's regulations concerning, *inter alia*, the procedures to follow for service to customers.¹¹

Complainant's Position

Complainant contends Rasier overcharged him for identical rides in February and March of 2017. He requests a refund and an audit of his past trips. Mr. Wagner-Dobler avers the effective rate charged by Rasier was ten times the estimated rate quoted by Respondent when Complainant requested the service. Specifically, Complainant avers he took multiple trips in February and March of 2017 from his place of employment to the same location where he received physical therapy services. Sometimes Rasier charged him \$7 and sometimes Rasier charged him \$18 to \$20. Mr. Wagner-Dobler argues he checked Rasier's application and the estimate was always \$7 but he admits after the first few times he requested service he did not always pay close attention to see if the estimated cost was different than \$7.

Respondent's Position

Rasier avers it correctly charged Complainant and provided reasonable and adequate customer service each time it provided transportation to and from his workplace to his therapy sessions. Rasier acknowledges that sometimes its application estimated a higher cost to

¹⁰ 66 Pa.C.S.A. § 2607(c) and (d).

¹¹ 66 Pa.C.S.A. § 2604(b).

Complainant because the pick-up or drop-off locations were part of large campuses with confusing addresses. In those circumstances, Rasier avers its application assumed Complainant wanted to be picked up along the on-ramp for a nearby highway and be driven to the next exit before the driver would return Complainant to his destination point. Rasier insists the estimated cost provided to Mr. Wagner-Dobler prior to the trip would have been consistent with what Rasier actually charged him after the trip. Rasier also points out that it refunded the difference in cost for the three trips at issue. Accordingly, Rasier requests the Commission dismiss the formal complaint because Rasier did not overcharge Complainant for the service it provided.

Analysis

It should be noted that Rasier refunded Complainant for the overcharges. Complainant continued to aver at the initial hearing that he did not think he had received a refund from all of the trips but admitted he was unclear and uncertain. As a result, Complainant failed to show he was not reimbursed for all the trips, but I note Rasier reimbursed Complainant for its errors.

Pursuant to 66 Pa.C.S.A. § 1501:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....

Complainant's testimony was that he believed he had checked the estimated cost for all of these trips prior to requesting service on the application on Rasier's website but he had taken so many trips during this time period that he could not say with certainty if he actually had

verified the trip cost to be approximately \$7 for each and every trip. Mr. Wagner-Dobler testified he was positive, however, that he had reviewed the estimate many times and the estimate was always approximately \$7. Complainant said he picked Rasier, over Lyft or any other transportation service provider, because the estimate was the lowest and he would not have requested service from Rasier if he had known he would be charged \$18 to \$20 for the 1.5 miles trip.

Rasier acknowledged that sometimes its website application makes assumptions about where the pick-up or drop-off points are located. Rasier insisted the estimate would have shown clearly that the final charge would be higher than Mr. Wagner-Dobler expected. Rasier insisted it never charges more than its estimated price, even if traffic jams or road conditions caused a trip to take significantly more time and/or cover a significantly greater distance. Rasier admitted that it would not charge a lower rate than its estimate, however, if a driver took advantage of a shortcut. Rasier also insisted it was the rider's responsibility to fidget with the website application if the estimate assumes the wrong pick-up point, such as alongside a highway on-ramp.

Rasier insists it was correct to charge Complainant for longer trips when what it provided were shorter trips. Specifically, Rasier charged Complainant for a fictitious trip that assumed Complainant wanted to be picked up on the on-ramp of a highway, driven up the highway to the next exit at which point Rasier's driver was supposed to get off the highway and re-enter in the opposite direction and end up in the original location. This trip is fictitious because it is based on an erroneous assumption by Rasier's website application and the trip was never provided in actuality.

In essence, Rasier charged Complainant for a trip it did not provide. It is not reasonable or adequate customer service for Rasier to insist it has the right to be paid for service it did not provide. It did not provide Mr. Wagner-Dobler with a long drive on those three dates. Rasier provided a short drive totaling 1.5 miles in length. Reasonable and adequate customer service requires that Rasier be paid for the service it provided, not for a fictitious service of greater price.

At issue in this proceeding are three trips which Rasier provided to Mr. Wagner-Dobler in February and March of 2017. Rasier charged Complainant at a significantly higher rate than other identical trips Rasier provided around the same time period. In addition, these charges were significantly higher than the charges assessed to Mr. Wagner-Dobler previously. After reviewing the evidence presented by Complainant, I conclude Rasier did violate Commission regulations when it charged Complainant \$18 to \$20 for transportation service totaling 1.5 miles, after quoting and charging a price of \$7 for the same service provided over the same distance at the same time of day on occasions before and after the dates in question. Rasier never picked up Complainant along the side of a highway, drove him down the highway before exiting and reentering the same highway. However, once Rasier learned of the formal complaint, it moved quickly to refund the overcharges back to Complainant. For that reason, no civil penalty will be discussed or issued herein. Accordingly, I conclude in the paragraphs below that Rasier charged Mr. Wagner-Dobler for transportation service in excess of what Rasier actually provided on three occasions in February and March of 2017.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S.A. § 701, and §2601, *et seq.*
2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is on Complainant. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).
3. Pursuant to 66 Pa.C.S.A. § 1501, Respondent must furnish and maintain adequate, efficient, safe, and reasonable service to Complainant.
4. Complainant met his burden of proving that Respondent failed to provide adequate, efficient, safe and reasonable service when it charged him for transportation service in excess of what Respondent provided to Complainant on February 24, 2017, March 10, 2017, and March 13, 2017.

