

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

Keystone Cab Service, Inc.

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C-2019-3004891

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission or PUC) filed a complaint against Keystone Cab Service, Inc. (Keystone or Respondent). The complaint alleges that Keystone provided service to a customer and charged a flat rate rather than using the taxi meter. I&E argues that by failing to engage the meter during a trip, Keystone violated the Public Utility Code, 52 Pa. Code § 29.316, and therefore seeks a civil penalty of \$500 against Keystone. This decision denies and dismisses the complaint for the failure of I&E to meet their burden of proof.

HISTORY OF THE PROCEEDING

On May 16, 2019, I&E filed a complaint with the Commission alleging that a driver for Keystone had charged a customer \$200 bi-weekly to provide transportation to and from her place of work. I&E alleged that the driver was therefore using a flat rate and not the

taxi meter for these trips. I&E further alleged that the driver in question had failed to record these trips in the driver's log.

On May 29, 2019, Keystone filed an answer and new matter to the complaint in which it admitted or denied the various averments of the complaint. Keystone's new matter indicated that the driver identified by I&E as Carl Carter, Jr., did not operate a taxi owned by Keystone during the relevant time period.

On June 21, 2019, I&E filed a reply *nunc pro tunc* to Keystone's new matter in which I&E denied the averments contained therein.¹

On March 10, 2020, a hearing notice was issued scheduling this matter for an initial in-person hearing on April 15, 2020. On March 11, 2020 a prehearing order was issued addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The April 15, 2020 in-person hearing was subsequently cancelled due to the closing of the Commission's offices on March 16, 2020 in response to the Covid-19 pandemic.² On May 8, 2020, a notice was issued rescheduling the hearing as a call-in telephonic hearing on July 7, 2020.

The July 7, 2020, hearing was conducted as scheduled. Appearing on the behalf of I&E was attorney Matthew Fallings and two witness who sponsored one exhibit which was admitted into the record. Appearing on the behalf of Keystone was attorney Stephen Hickey and two witnesses who sponsored no exhibits. The hearing resulted in a transcript of 35 pages. The

¹ No objections were raised regarding I&E's reply to the new matter. I&E's reply will therefore be accepted *nunc pro tunc*.

² The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. However, the Commission has continued working remotely.

record closed on July 7, 2020, at the conclusion of the hearing. For the reasons discussed below, the complaint in this matter will be denied and dismissed.

FINDINGS OF FACT

1. The Complainant is the Commission's Bureau of Investigation and Enforcement.
2. The Respondent is Keystone Cab Service, Inc.
3. On April 19, 2019, PUC Enforcement Officer Travis Griffith was assigned to investigate a complaint filed by Susan Fisher. N.T. 9.
4. Officer Griffith spoke with Ms. Fisher and concluded that she had been a customer of Keystone Cab Service and had been charged a flat biweekly rate for driver services instead of a metered rate. N.T. 9.
5. Officer Griffith further concluded that Ms. Fisher's last week of cab service with Keystone was the week of June 11 through June 15, 2018. N.T. 10.
6. Officer Griffith contacted Cory Leshner, the manager of Keystone and determined that Carl Carter, Jr. had been Ms. Fisher's driver during this period of time—i.e., June 11-15, 2018. N.T. 10.
7. Officer Griffith subsequently received the driver log for Mr. Carter for the week of June 11 through June 15, 2018. N.T. 10.
8. I&E Ex. 1 is the driver log for Mr. Carter, driver 145, for June 11 through June 14, 2018. N.T. 10.

9. This log did not contain a record of Ms. Fisher's trips from her home address to her place of work during this period of time. N.T. 11; I&E Ex. 1.
10. Officer Griffith spoke to Mr. Carter about driving Ms. Fisher. N.T. 12.
11. Mr. Carter admitted that he had driven Ms. Fisher to and from her place of work during this time period (June 11-15, 2018). N.T. 12.
12. Mr. Carter further admitted that Ms. Fisher had been charged a \$200 biweekly flat rate to be driven to and from her home and place of work. N.T. 12.
13. Keystone and Good Cab LLC (Good Cab) are under the same ownership but are separate certificated entities. N.T. 31.
14. The Form E's filed with the Commission, indicate that Keystone and Good Cab operate under separate insurance policies. N.T. 30.
15. Mr. Carter is insured as a driver only under Good Cab's policy. N.T. 30.
16. During the period of time at issue, Mr. Carter had only driven for Good Cab. N.T. 29, 30.
17. Mr. Carter's driver log for the time period in question, I&E Ex. 1, indicates that the log is for G35 – Good Cab vehicle number 35. N.T. 29, I&E Ex. 1.

DISCUSSION

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”

Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008). As the Complainant, I&E has the initial burden of establishing that Keystone Cab has violated the Public Utility Code.

The Code provides in pertinent part:

§ 29.316. Tariff requirements.

(a) *Charges*. Every call or demand carrier shall charge, according to its tariffs filed, posted and published in accordance with law and this title, the amount as is calculated and registered on the meter or other approved device.

(1) Nonflexible rates. Nonflexible rate tariffs for call or demand carriers must be based on time, mileage or a combination of both.

52 Pa. Code § 29.316(a)(1). I&E must show that cab service provided by Keystone Cab violated this provision of the Public Utility Code.

Here, there are virtually no facts in dispute between the parties. Both parties agree that Ms. Fisher received taxi service to and from her home and place of work between June 11 and June 15, 2018 and that her driver during these trips was Carl Carter, Jr. Both parties also agree that Ms. Fisher was charged a flat biweekly rate of \$200 for these trips.

In short, only a single fact remains in contention between the parties. At the time Mr. Carter was providing Ms. Fisher with this cab service, was he doing so as a driver for Keystone or Good Cab?

Based on the totality of the testimony and evidence presented, it is concluded that Mr. Carter was providing these services as a driver for Good Cab. Keystone's witnesses credibly testified that Keystone and Good Cab are under the same ownership but are separate certificated

entities. N.T. 31. The Form E's filed with the Commission, indicate that Keystone and Good Cab operate under separate insurance policies. N.T. 30. Mr. Carter is insured as a driver only under Good Cab's policy. N.T. 30. During the period of time at issue, Mr. Carter had only driven for Good Cab. N.T. 29, 30. Mr. Carter's driver log for this same time period indicates that the log is for G35 – Good Cab vehicle number 35. N.T. 29, I&E Ex. 1.

Keystone's witness, Mr. Leshner, also provided a credible explanation as to how many customers, including Ms. Fisher, can confuse Keystone and Good Cab when they call for service.

Here at our garage location that we service there's the several taxi companies that I manage. We also have a joint dispatch facility. Calls will come in to one of several numbers in the dispatch facility and the call is dispatched to the next available cab. The dispatch facility doesn't answer the phone, "Keystone Cab," but Keystone Cab is the taxi service that's been around the longest that I manage. So a lot of folks who have been around a long time will refer to all the cabs here as Keystone Cab.

N.T. 29-30.

In Ms. Fisher's testimony, she indicated that she had been using cab services for 20 years and that she knew a lot of cab companies under the Keystone name, but the cab company was called Keystone. N.T. 21. When asked if she was indicating that the parent company was Keystone but it was not necessarily the cab she used, Ms. Fisher answered "yes". *Id.*

I&E has failed to demonstrate that Keystone has violated 52 Pa. Code § 29.316 by failing to utilize a meter while providing service to Ms. Fisher. To the contrary, the testimony and evidence indicates that the services provided to Ms. Fisher were done so by Mr. Carter as a driver for Good Cab. The complaint against Keystone will therefore be denied and dismissed.³

³ Nothing relating to this denial and dismissal precludes I&E from pursuing the same complaint against Good Cab, LLC. The record of Ms. Fisher's interactions, and the method by which she was charged for cab service, have been testified to under oath and are uncontroverted by either party - including Mr. Leshner, the manager for both Keystone and Good Cab, LLC. N.T. 28.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §§ 501(b), 701.

2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa. C.S. § 501(a).

3. As the holder of a Commission-issued certificate of public convenience, Respondent has a duty to comply with Commission orders and regulations. 66 Pa. C.S. § 501(c).

4. Every call or demand carrier shall charge, according to its tariffs filed, posted and published in accordance with law and this title, the amount as is calculated and registered on the meter or other approved device. 52 Pa. Code § 29.316 (a).

5. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

6. I&E has failed to show that Keystone Cab Service, Inc. failed to charge, according to its tariffs filed, posted and published in accordance with law and this title, the amount as is calculated and registered on the meter or other approved device. 66 Pa. C.S. § 332(a); 52 Pa. Code § 29.316 (a).

