

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2023-3037385
	:	
Jerome McCree, Sr.	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Formal Complaint filed by the Commission’s Bureau of Investigation and Enforcement, alleging Respondent operated a vehicle for compensation, in call or demand service, without first having received a certificate of public convenience or authority.

HISTORY OF THE PROCEEDING

On July 6, 2023, the Commission’s Bureau of Investigation and Enforcement (BIE or Complainant) filed a Formal Complaint (Complaint) against Jerome McCree, Sr. (Respondent or Mr. McCree) with the Pennsylvania Public Utility Commission (Commission). Complainant alleges Mr. McCree operated a vehicle for the purpose of transporting passengers for compensation, in call or demand service, within the Commonwealth of Pennsylvania without first receiving a certificate or authority from

the Commission, in violation of 66 Pa.C.S. § 1101. BIE requested payment of a \$1,000 civil penalty and such other remedy as the Commission may deem appropriate including possible suspension of Respondent's vehicle registration.

On July 6, 2023, the Commission served the Complaint on Respondent via Certified Mail, Return Receipt Requested, through the United States Postal Service (USPS), by mailing the same to 232 Chalfont Street, Pittsburgh, Pennsylvania 15210 (McCree address).

On August 10, 2023, the USPS returned the Complaint, noting the Certified Mail was unclaimed and unable to be forwarded.

On August 23, 2023, the Commission re-served the Complaint upon Respondent by mailing the same via First-Class Mail to the McCree Address. The Complaint was not returned to the Commission by the USPS as undeliverable.

On September 18, 2023, Respondent filed an unsigned letter which stated: "I, Jerome B McCree Sr., request a hearing before an administrative judge. At this time, I will not make any legal arguments against the allegations until I seek legal counsel."

On November 27, 2023, Respondent filed an unsigned letter which stated: "I, Jerome B McCree Sr., request a hearing before an administrative judge. At this time, I will not make any legal arguments against the allegations until I seek legal counsel."

On December 28, 2023, Complainant filed and served Preliminary Objections (Preliminary Objections) on Complainant, which were endorsed with a Notice to Plead. Complainant argued Mr. McCree failed to advise the Commission or BIE what was the nature of his defense, failed to admit or deny any allegation of the Complaint and failed to state concisely the facts and matters of law upon which Mr. McCree relied upon

in filing his undated responses. BIE asserted the undated responses were not “pleadings” because the documents failed to include all five required elements for an answer to a formal complaint.

Further, BIE contended, even if the presiding officer finds any of the undated and unsigned responses is a “pleading,” BIE requested the Commission determine that the responses fail to contain sufficient specificity, pursuant to 52 Pa. Code §§ 5.101(a)(3) and (c).¹ BIE requested the Commission issue a decision that grants the Preliminary Objections for Legal Insufficiency and Insufficient Specificity and direct Respondent (Mr. McCree) to file an answer that conforms to the requirements of 52 Pa. Code § 5.61.

On January 10, 2024, Respondent filed an unsigned letter which stated: “I, Jerome B McCree Sr., request a hearing before an administrative judge. At this time, I will not make any legal arguments against the allegations until I seek legal counsel.”

On March 4, 2024, the Office of Administrative Law Judge (OALJ) assigned this proceeding to the presiding officer as a Motion Judge for purposes of ruling on Complainant’s Preliminary Objections.

On March 8, 2024, the presiding officer issued the First Interim Order requiring Mr. McCree to file a more specific Answer. The presiding officer noted Mr. McCree is unrepresented by counsel but individuals such as Mr. McCree are not required to obtain the services of an attorney. The presiding officer noted individuals are permitted to represent themselves before the Commission in a formal proceeding, such as

¹ Provisions at 52 Pa. Code § 5.101, preliminary objections are available to any party and must state specifically the legal and factual grounds relied upon when requesting relief from the Commission. The six specified grounds upon which preliminary objections must be based include in sufficient specificity of a pleading and legal insufficiency of a pleading.

this case,² but the fact Mr. McCree has not retained an attorney (more than nine months after the Complaint was filed) is insufficient grounds to delay a hearing or to justify his failure to provide a more specific answer.

The First Interim Order required Respondent, Mr. McCree, to file a specific Answer with the Commission's Secretary's Bureau, on or before 4:00 p.m. on Friday, April 12, 2024. The First Interim Order stated an initial hearing would be scheduled if Mr. McCree provided a specific Answer on or before April 12, 2024. The First Interim Order noted if Mr. McCree did not file a specific Answer on or before April 12, 2024, the presiding officer might grant the requests of BIE without an initial hearing.

No response or communication, including an Answer, was received from Mr. McCree after January 10, 2024.

On April 22, 2024, BIE filed and served a Motion for Default Judgment (Default Motion), with a Notice to Plead, upon Mr. McCree. In the Default Motion, BIE asserted it filed Preliminary Objections against Mr. McCree and alleged Respondent's earlier responses were legally insufficient and lacked sufficient specificity. BIE contended Mr. McCree must respond within 20 days by filing an answer and, if failing to do so, the presiding officer should grant the Default Motion against Respondent. In its Default Motion, BIE notes the Commission has authority pursuant to 66 Pa.C.S. § 3301 to impose civil penalties up to \$1,000 on any utility's failure to comply with the Commission's regulations or the Public Utility Code. However, BIE did not provide a justification for its request that the Commission assess a fine of \$1,000 against Respondent.

² 52 Pa. Code § 1.21.

On May 7, 2024, Mr. McCree filed but did not serve a letter, dated May 6, 2024, consisting of 4 paragraphs. The letter indicated Mr. McCree was aware of BIE's request for a fine of \$1,000 but asserted the notice did not provide a detailed explanation of the grounds for the fine. Mr. McCree requested assistance to secure a hearing. Mr. McCree requested a hearing so he could review the evidence presented against him, cross-examine evidence, and argue the merit and legality of the impending fine.

On May 20, 2024, the presiding officer issued a letter to BIE, with a copy to Respondent, notifying BIE that the presiding officer learned about Mr. McCree's *ex parte* letter dated May 7, 2024, while checking the official docket in this proceeding on May 17, 2024. The presiding officer granted BIE time in which to object to or comment on the letter dated May 7, 2024.

Thereafter, on May 22, 2024, BIE filed a Motion to Strike Respondent's Document (Motion to Strike), with a Notice to Plead, which concerned the document filed by Respondent on May 7, 2024. In the Motion to Strike, BIE noted Respondent had not filed a meaningful answer to the Complaint, despite repeated requests from BIE and the Interim Order dated March 8, 2024. BIE asserted the letter filed on May 7, 2024, failed to comply with the Commission's regulation by not containing a Certificate of Service and by not being served upon BIE. Further, BIE argued the Default Motion should be granted because Mr. McCree's letter failed to raise any questions of law or fact in response to the Default Motion. BIE asserted Mr. McCree offered no explanation or cause for his failure to file an answer that complies with the Commission's regulations. BIE requested an initial decision that would grant the Motion to Strike, grant the Default Motion, sustain the Complaint, order and assess a civil penalty of \$1,000 and refer the matter to the Pennsylvania Office of Attorney General for collection of outstanding amounts due and any other appropriate action.

On July 22, 2024, the presiding officer issued the Second Interim Order which denied the Preliminary Objections of Complainant, denied the Motion to Strike of Complainant and ordered the matter be scheduled for an initial hearing.

Thereafter, on July 24, 2024, the OALJ issued the Initial Call-In Telephone Hearing Notice scheduling this proceeding for August 27, 2024. On July 25, 2024, the presiding officer issued the Prehearing Order which provided additional direction to the parties on procedural matters.

On August 27, 2024, the presiding officer conducted the initial hearing by telephone with the following individuals present: Colby B. Widdowson, Esquire, representing Complainant; Andrew Rosenberger, Enforcement Officer; James Murray, Supervisory Enforcement Officer; and Jerome McCree, Sr., Respondent. Testimony was provided by Messrs. Rosenberger and Murray, and by Respondent. Complainant sponsored two exhibits which were admitted as I&E's Exhibits 1 and 2.

On September 10, 2024, the official transcript and exhibits were filed with the Commission, consisting of 64 pages plus two exhibits. On September 11, 2024, the presiding officer issued the Interim Order Closing the Hearing Record. This matter is now ripe for disposition.

FINDINGS OF FACT

1. Complainant is the Commission's Bureau of Investigation and Enforcement, to which the Commission delegated authority to initiate prosecutions, such as in this case.

2. Respondent is Jerome McCree, Sr. who has a principal place of business at 232 Chalfont Street, Pittsburgh, Pennsylvania 15210. (I&E Exhibit 1).

3. On April 28, 2023, BIE's Motor Carrier Enforcement Division (Motor Carrier) conducted an undercover operation in the evening at the Rivers Casino in Pittsburgh, Allegheny County, Pennsylvania. (Tr. 12, 19).

4. As part of the investigation, Enforcement Officer Andrew Rosenberger (Officer Rosenberger) wore plain clothes, smoked a cigar and positioned himself near the entrance to the casino in the section reserved for smokers. (Tr. 12, 18).

5. The purpose of the investigation was to identify for prosecution any individuals who operate a vehicle for the purpose of transporting passengers for compensation, in call or demand service, without a Certificate of Public Convenience (Certificate or certificated authority) from the Commission. (Tr. 19).

6. There are five lanes of traffic available at the entrance to the Rivers Casino to provide access to the entrance, to assist with drop-off and pick up of individuals and for short term parking for personal vehicles, taxis and other modes of motor vehicle transportation. (Tr. 24).

7. At approximately 9:30 p.m., Mr. McCree drove a 2012 Chevy Equinox (subject vehicle) into the entrance area at the casino and pulled his vehicle over to the curb to await a rider who requested service through the Uber application. (Tr. 15, 16, 22 - 25, 30 - 33, 45; I&E Exhibit 2).

8. Mr. McCree has been a driver for Uber since February 2016. (Tr. 47).

9. The subject vehicle was equipped with two dome lights attached vertically (one on top of the other) in the center of the subject vehicle's roof with one

light displaying “Available” in large lettering and the other light displaying “Checker” in smaller lettering. (Tr. 16, 25, 32; I&E Exhibit 1).

10. Respondent uses the dome lights to help Uber riders to find his car. (Tr. 47, 50, 57).

11. After April 28, 2023, Respondent talked with Uber and replaced the “Checker” dome light with an “Uber” dome light on the subject vehicle. (Tr. 47, 48).

12. On April 28, 2023, an Uber decal was visible on the front windshield of the subject vehicle. (I&E Exhibits 1 and 2).

13. On April 28, 2023, Respondent drove through the entrance, pulled the subject vehicle over to the curb at the casino’s entrance near a designated smoking area, and awaited the Uber rider who requested service through the application. (Tr. 45 - 47)

14. On April 28, 2023, the dome lights on the subject vehicle were illuminated. (Tr. 30; I&E Exhibits 1 and 2).

15. While Respondent waited for his Uber rider, Officer Rosenberger, who was smoking a cigar in the designated smoking area, approached Mr. McCree and complained about the lack of available cabs. (Tr. 22 – 26, 45 - 47).

16. Officer Rosenberger asked Respondent if he was available to give him and a friend a ride over to the Hofbrauhaus restaurant on the Southside of Pittsburgh, in exchange for receiving \$20 per person, or \$40 total. (Tr. 12 - 15, 25, 50 - 57).

17. Respondent informed Officer Rosenberger that he (Respondent) was an Uber driver waiting for his Uber rider to come out of the casino. (Tr. 45).

18. Respondent advised Officer Rosenberger that he could not provide a ride for money outside the Uber application, although he could accept a donation but only if his Uber rider did not exit the casino within a few minutes. (Tr. 45, 48).

19. After discussion, Mr. McCree agreed to provide transportation for two people to the Hofbrauhaus if Respondent's Uber rider did not come out within five minutes, in exchange for a donation. (Tr. 15, 45, 48, 55).

20. After Respondent agreed to transport two individuals for compensation, Officer Rosenberger, who was in plainclothes, informed Respondent he was entering the casino to find his traveling companion where he contacted his supervisor, Supervisor Enforcement Officer James Murray (Officer Murray), by telephone to identify the subject vehicle. (Tr. 11 – 27).

21. On April 28, 2023, Mr. McCree did not request or require Officer Rosenberger first to sign up for a ride through Uber before agreeing to drive him to the Southside. (Tr. 44 - 59).

22. When confronted a few minutes later by Officer Murray, Respondent was polite and cooperated with the officers at the casino on April 28, 2023. (Tr. 32, 33).

23. The Commission has not authorized Respondent to transport passengers for compensation, on call or demand, or granted Mr. McCree a Certificate of Public Convenience to operate as a transporter of people for compensation. (Tr. 39).

24. In 2016, the Commission issued a non-traffic citation to Mr. McCree when investigators found Respondent transporting cement bags in the subject vehicle at the Home Depot while displaying a dome light. (Tr. 39, 40, 48 - 51).

25. Respondent's testimony was accepted as credible except his recollection that the dome light on his car was not illuminated on April 28, 2023.

26. The testimony of Witness Rosenberger was accepted as credible except his recollections about his interactions with Respondent and who initiated the discussion of a ride for remuneration.

27. The testimony of James Murray was accepted as credible.

DISCUSSION

As outlined in the Findings of Fact and discussed below, Mr. McCree did not offer to transport two people, in call or demand service, for compensation. Mr. McCree agreed to transport two people. The parties' testimonies agreed in all material details and convincingly established that the plainclothes officer approached Mr. McCree, broached the subject of needing a ride, made repeated requests and, after initially denying the request, Mr. McCree relented to the repeated requests and agreed to transport two people.

But for the actions of the plainclothes officer, Mr. McCree might have avoided being the subject of a complaint alleging violation of the Public Utility Law at 66 Pa.C.S. § 1101–1103, and at most he might have received a citation for the presence of dome lights on the subject vehicle, in contravention to 75 Pa.C.S. § 1375.

Complainant's Position

On July 6, 2023, Complainant BIE filed a Complaint alleging Jerome McCree, Sr., operated a 2012 Chevrolet Equinox on April 28, 2023, at the Rivers Casino in Pittsburgh, Pennsylvania, and offered to transport passengers for compensation, in call or demand service, without a certificate of public convenience. BIE requested the Commission order Respondent to cease and desist, assess a penalty totaling \$1,000 and order such remedy as appropriate including a possible suspension of Respondent's vehicle registration.

Respondent's Position

Respondent avers he was entrapped by the Motor Carrier Officer because he (Respondent) did not offer to drive people for compensation and he did not approach the Motor Carrier Officer to offer to drive people for compensation. Respondent argues the only person he offered to transport that night was the Uber rider and he was not looking to transporting people for compensation outside the Uber application.

II. APPLICABLE LEGAL PRINCIPLES

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving by substantial evidence it is entitled to the requested relief.³ To satisfy this burden, Complainant must show Respondent is responsible or accountable for the problem described,⁴ by a preponderance of the evidence, that is, by presenting

³ 66 Pa.C.S. § 332(a); 2 Pa.C.S. § 704.

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

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

Applicable Law for Motor Carriers

Any individual or entity that proposes to offer, render, furnish or supply transportation service to the public, by operating a vehicle, in call or demand service, for compensation, first must obtain from the Commission a certificate of public convenience.⁸ The commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, the provisions, and the full intent thereof, of the Code.⁹

When a person violates any of the provisions covering motor carriers in the Pennsylvania Public Utility Law, such person shall forfeit and pay to the Commonwealth a sum not to exceed \$1,000.¹⁰ Each and every day's continuance of the violation of any regulation, requirement, determination or order of the commission shall be viewed as a separate and distinct offense.¹¹ Any action for the recovery of a penalty and prosecution

⁵ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *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 Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

⁷ *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

⁸ 66 Pa.C.S. §§ 102, 1101-1103.

⁹ 66 Pa.C.S. § 501.

¹⁰ 66 Pa.C.S. § 3301(a).

¹¹ 66 Pa.C.S. § 3301(b).

of violations of the motor carrier provisions of the Public Utility Code must be brought within three years from the date when the liability arose.¹² Any person operating as a motor carrier - who fails to possess a certificate of public convenience authorizing the service - may be subject to the suspension of the registration of the subject vehicle pursuant to provisions concerning the Department of Transportation.¹³

Discussion under Motor Carrier provisions

BIE failed to prove Mr. McCree offered to provide transportation for compensation but BIE did prove through convincing evidence Mr. McCree agreed to transfer two individuals in his vehicle for compensation. For that reason, Mr. McCree will be assessed to pay a penalty (to be discussed below). The most influential facts leading to this conclusion are two facts: (1) Mr. McCree's statements (to which he admitted) that he was willing to transport persons for compensation; and (2) the presence of the dome lights on the subject vehicle.

Mr. McCree knew he should not provide transportation for compensation, as evidenced by his statements that he would accept a "donation" but could not accept compensation while operating under the Uber application. Mr. McCree also knew that dome lights were not permitted after he received a citation in 2016. Despite knowing he was not permitted to transport passengers, in call or demand service, without a Certificate of Public Convenience or to have dome lights on his vehicle, Mr. McCree continued to use dome lights, and he agreed to transport two people. For these reasons, the presiding officer came to the determination that Mr. McCree knowingly violated the Public Utility Code provisions at 66 Pa.C.S. §§ 1101-1103, and the transportation provisions at 75 Pa.C.S. § 1375.

¹² 66 Pa.C.S. § 3314(a).

¹³ 75 Pa.C.S. § 1375 (relating to the suspension of registration of unapproved carriers).

Civil Penalty

As stated above, Sections 3301(a) and (b) of the Code, 66 Pa. C.S. §§ 3301(a) and (b), authorize the Commission to impose a maximum civil penalty of \$1,000 per day for violations of its statutes, regulations and orders. In one case, the Commission was authorized to assess a civil penalty totaling \$2,000 against a taxicab owner when the owner was found to have violated the Public Utility Code on four separate violations.¹⁴ To determine whether a fine is appropriate and what level of fine is most appropriate given the circumstances, the Commission employs specific factors and standards when a violation is found.

Under Section 69.1201, 52 Pa. Code § 69.1201, the following factors and standards are considered in evaluating whether a fine is appropriate:

- (1) Whether the conduct at issue is of a serious nature, such as willful fraud or misrepresentation, which may warrant a higher penalty.
- (2) Whether the resulting consequences of the conduct at issue are of a serious nature, such as personal injury or property damage.
- (3) Whether the conduct at issue is deemed intentional or negligent. This factor may only be considered in evaluating litigated cases.
- (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.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation.

¹⁴ *Kviatkovsky v. Pa. Pub. Util. Comm'n*, 618 A.2d 1209 (Pa. Cmwlth. 1992).

(7) Whether the regulated entity cooperated with the Commission's investigation.

(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.

Discussion of Civil Penalty provisions

BIE requested a civil penalty totaling \$1,000 plus the possible suspension of Respondent's vehicle registration if the civil penalty is not paid timely. However, BIE did not explain why it requested the imposition of the most severe civil penalty (\$1,000) or provide any argument to support its prayer for the Commission to impose a penalty in the amount of \$1,000. There were no statements made in its Complaint, other filings or during the initial hearing to explain how BIE reached its assertion that an appropriate amount of penalty in this circumstance should be \$1,000, despite noting the applicability of 52 Pa. Code § 69.1201. BIE did not provide evidence or argument on any factor to explain why the appropriate amount of a civil penalty should be \$1,000, how that amount was determined or how that amount will act as a deterrent for Respondent's future compliance. For example, BIE could have provided evidence and assertions about:

- a. The serious nature of the violation,
- b. Any serious consequences resulting from the violation,
- c. If damage resulted from the violation,
- d. If the violation was a repeat offense or appeared to be intentional,
- e. If Respondent later modified his behavior to avoid future violations,

- f. Respondent's compliance history,
- g. Respondent's cooperation with the investigation, and
- h. What size penalty would deter future violations, given the size of Respondent's operation.

Accordingly, it became necessary for the presiding officer to review the evidence and regulatory provisions presented by both BIE and Respondent, to reach a determination as to the appropriate civil penalty, given the facts in this proceeding. First, it must be noted BIE justified a civil penalty appropriately should be imposed against Mr. McCree. While Mr. McCree entered the casino entrance legitimately without violating the Public Utility Code or the Commission's order and regulations because he was engaged on the Uber application, two violations did occur. First, Mr. McCree agreed to transport two people from the casino in his vehicle in exchange for compensation (\$40). While Mr. McCree did not offer or initiate the transport, Mr. McCree did not persist in requiring the plainclothes officer to first request a ride through the Uber application. Most importantly, Mr. McCree agreed to transport two people from the casino to another location for compensation (\$40).

Additionally, Mr. McCree intentionally violated the Department of Transportation's prohibitions against dome lights. Mr. McCree has known since 2016 that dome lights are not permitted on his vehicle. His reasoning - that he needs a dome light so his Uber passengers can find him in the dark or when they are drunk¹⁵ - is flawed and does not grant him permission to violate the statutory ban on dome lights. Under the law, only taxicabs and ambulances are permitted to have dome lights.

There are mitigating facts against a higher civil penalty. Those facts include: Mr. McCree was in the taxi area to pick up an Uber rider, not to transport for

¹⁵ Tr. 57.

compensation; Mr. McCree did not come to the taxi area for the purpose of operating in call or demand service; Mr. McCree did not approach the plainclothes officer to make an offer to transport; Mr. McCree made it clear he could not take compensation while operating under the Uber application; and Mr. McCree cooperated fully with the motor carrier enforcement officers.

The testimonies convincingly established Mr. McCree made more than one attempt to deny the plainclothes officer's requests. Under persistent requests from the officer and with no Uber rider appearing, Mr. McCree agreed to provide transportation for compensation. The presiding officer finds Mr. McCree was identified by the plainclothes officer as a jitney driver upon his arrival in the entrance area, who then pursued Respondent with persistent questioning to such a degree that the officer's actions convinced Respondent to acquiesce.

No evidence was presented that Mr. McCree approached any other individual standing outside the casino to offer transportation, or generally was milling around the casino entrance, trying to find passengers he could offer to transport for compensation. The only evidence presented, prior to the officer approaching him, that Mr. McCree was violating or in danger of violating any statute or regulation was the presence of the dome lights. Without the dome lights, it is doubtful the officer would have set out to talk with Respondent or that BIE would have filed a complaint against Mr. McCree.

While it is understood that motor carrier officers must seek out rides and initiate interactions with potential non-certificated carriers, the officer was too persistent. The result herein might have been different if, after learning an Uber rider was expected, the officer had retreated to the smoking area and waited to see if Mr. McCree approached him to offer transportation. However, Respondent is forewarned that he will not be able to use entrapment or undue influence as a defense again if he offers or agrees to drive an

individual for compensation. Mr. McCree is not absolved from complying in the future despite the mitigation against a larger penalty due to the officer's persistence in this particular instance.

Based on all the evidence presented, the presiding officer finds the amount of \$100 for a civil penalty is just and reasonable. Further, approval of same is in the public interest. At this amount, Respondent has a deterrent not to operate as a common carrier of persons, for the purpose of transportation, in call or demand service, without first obtaining a Certificate of Public Convenience from the Commission. This deterrent will increase if Respondent fails to comply with the Public Utility Commission or the Commission's orders and regulations in any future circumstances. A civil penalty of \$100 against Respondent is appropriate under the circumstances because he has no prior violations, he may have acquiesced due to persistent requests, he was cooperative with the investigating officers and he has a small operation, consisting of himself as an Uber driver.

IV. CONCLUSIONS OF LAW

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

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

3. The burden of proof in this proceeding is on the Bureau of Investigation and Enforcement as the proponent of an order from the Public Utility Commission. 66 Pa.C.S. § 332(a).

4. Jerome B. McCree, Sr., did not comply with the Public Utility Code when he agreed to transport people, as a common carrier, in call or demand service, and when he operated a vehicle with dome lights on the roof. 66 Pa.C.S. §§ 1101-1103; 75 Pa.C.S. § 1375.

5. The Commission is authorized to consider and impose civil monetary penalties against a public utility, person or corporation that violates the Pennsylvania Public Utility Code. 66 Pa.C.S. § 3301; 52 Pa. Code § 69.1201.

6. The Public Utility Commission may impose a civil penalty for each separate violation of the Public Utility Code. 66 Pa.C.S. § 3301.

7. The fine of \$100 against Respondent is appropriate under the Commission's Policy Statements and Guidelines. 52 Pa. Code §69.1201.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety, at Pa. Public Utility Commission v. Jerome B. McCree, Sr., at Docket No. C-2023-3047385, is hereby granted.

2. That within 30 days after entry of the Commission's Final Order in this case, Jerome B. McCree, Sr., shall pay a civil penalty of One Hundred Dollars (\$100) pursuant to Sections 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, by sending a

certified check or money order, made payable to the “Commonwealth of Pennsylvania” with the docket number of this proceeding listed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That Jerome B. McCree, Sr. shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§101–3316, and the regulations of this Commission, 52 Pa. Code §§1.1–1065.1.

4. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. That the Bureau of Administrative Services, Assessment Section shall monitor this matter for compliance.

6. That, if Jerome B. McCree, Sr. fails to make the payment required by Ordering Paragraph No. 2 above, within 30 days of the entry date of the Commission’s Final Order, it is further ordered:

- a. That the Commission will send a copy of this Order to the Pennsylvania Department of Transportation for the suspension or revocation of vehicle registrations that were used under Jerome B. McCree, Sr’s operating authority; and
- b. The Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney

