

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation & Enforcement	:	
	:	
v.	:	C-2015-2464291
	:	
Capital City Cab Service	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

This initial decision dismisses a formal complaint filed by the Commission’s Bureau of Investigation and Enforcement against a taxi company due to the Bureau’s failure to prove, by a preponderance of the evidence, that the Respondent illegally refused to provide service to a potential customer.

HISTORY OF THE PROCEEDING

On or about April 2, 2015, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (I&E) filed a formal complaint against Capital City Cab Service (Capital City or Respondent) in which it alleged that a Capital City driver refused to provide taxi service to a potential customer due to the short distance of the requested trip. I&E is seeking, by way of relief, that its complaint be sustained and a civil penalty in the amount of \$500.00 be imposed on Capital City.

The Respondent filed an answer to I&E’s complaint on April 20, 2015. Capital City denied that it refused to provide the requested service. It averred that its driver merely

directed the customer to the front of the taxi line, as is customary at the Harrisburg Transportation Center.

By Hearing Notice dated February 22, 2016, a hearing was scheduled in this proceeding for Monday, March 28, 2016, in Harrisburg, PA. I&E was represented at the hearing by Stephanie M. Wimer, Esquire. I&E presented the testimony of two witnesses and sponsored seven exhibits, all of which were admitted into the record. The Respondent was represented by Joseph T. Sucec, Esquire and presented the testimony of one witness. The record consists of a 51-page transcript and the seven I&E exhibits. The record closed April 25, 2016, upon my receipt of the transcript. The matter is now ready for disposition.

FINDINGS OF FACT

1. The Complainant is the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement.
2. The Respondent is Capital City Cab Service, which maintains a principal business address of 362 South Front Street, Steelton, Pennsylvania, 17113.
3. Respondent was issued a Certificate of Public Convenience by the Commission on October 26, 1997, at Docket No. A-00113875, for call or demand authority.
4. David Dekok lives in the Shipoke neighborhood of Harrisburg, Pennsylvania and testified on behalf of I&E. Tr. 9.
5. Timothy Troxell has worked as an enforcement officer with the Commission for the past seven years and testified on behalf of I&E. Tr. 14.
6. Saleh Elazouni works for Capital City and has been a cab driver for thirteen years. Tr. 31-32.

7. I&E Exhibit No. 1, which contains two photographs, shows the PUC number on the side of the cab that is the subject of this proceeding on the evening in question.

8. I&E Exhibit No. 2 is a copy of the log sheet for the cab that is the subject of this proceeding on the evening in question.

9. I&E Exhibit No. 3 is a copy of the Taxi Cab Operating Policy from the HTC.

10. I&E Exhibit Nos. 4 is a compilation of Commission Secretarial letters and decisions wherein civil penalties have been imposed on Capital City for various infractions of the public utility code.

11. I&E Exhibit Nos. 5, 6A and 6B are copies of Commission decisions wherein civil penalties were imposed Pennsylvania taxi companies for violations of the public utility code.

12. Late in the evening on January 25, 2015, Mr. Dekok and his daughter returned by train from New York to the HTC. Tr. 8-9.

13. At approximately 11:35 p.m. that night, Mr. Dekok approached a cab in the taxi line at the HTC seeking a ride home. Tr. 9.

14. The cab that Mr. Dekok approached was a Capital City cab driven by Saleh Elazouni. Tr. 15, 18-19, 43; I&E Exhibit No. 1.

15. The cab that Mr. Dekok approached and that was driven by Mr. Elazouni was the last cab in the cab line at the HTC at that time. Tr. 9, 33.

16. Mr. Dekok was seeking a cab to take him from the Harrisburg Transportation Center to his home in the Shipoke neighborhood of Harrisburg. Tr. 9.

17. When approached by Mr. Dekok, Respondent's driver informed him that he could not provide the trip because he already had another passenger getting in the car on the other side. Tr. 10, 35, 37, 40.

18. Mr. Elazouni offered to take Mr. Dekok and his daughter home on the way to dropping off the other customer, but Mr. Dekok refused. Tr. 10, 35, 37.

19. Mr. Elazouni took the other passenger to a location in New Cumberland. Tr. 19; I&E Exhibit No. 2.

DISCUSSION

I&E alleges in this proceeding that its witness, David Dekok, was refused service by the Respondent's driver because the trip sought was a short distance, from the Harrisburg Transportation Center to Harrisburg's Shipoke neighborhood. Respondent, on the other hand, argues that its driver did not refuse to provide the requested service. Rather, Respondent's driver claims he already had a customer when he was approached by Mr. Dekok. The driver insists that he did not refuse to provide service to Mr. Dekok due to the short distance of the requested trip.

Generally, a party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). Typically, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), *alloc, denied*, 602 A.2d 863 (1992). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854, 1950 Pa. LEXIS 316 (1950).

Under the Commission's regulations, however, in cases involving an allegation that a public utility violated a lawful determination or order of the Commission, the burden of

proof is on the utility to show that the determination or order has been complied with. 52 Pa.Code §315(b). Additionally, where, upon motion of the Commission involving the service or facilities of a public utility, the burden of proof is likewise upon the utility to show that its service and facilities are adequate, efficient, safe and reasonable. 52 Pa.Code §315(c). Accordingly, the burden of proof in this proceeding is upon the Respondent to prove its case by a preponderance of the evidence. As noted above, this means that it must merely present evidence that is more convincing, be even the smallest amount, that that presented by I&E.

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *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. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (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).

The offense complained of must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

The Commission's regulation at 52 Pa.Code §29.313(a) provides, "[a] driver of a call or demand vehicle shall, at all times when on duty and not engaged, furnish trip service to an orderly person for lawful purposes." The issue here is whether the Respondent's driver had a valid, legal reason for initially refusing to take Mr. Dekok to his home in Shipoke.

The parties to this proceeding have made inconsistent claims as to what happened when Mr. Dekok approached the cab being driven that evening by Mr. Elazouni. It is undisputed that Mr. Elazouni did not take Mr. Dekok to his home in Shipoke that evening. Both parties acknowledged this. Mr. Dekok claims that Mr. Elazouni refused to transport him and his daughter from the Harrisburg Transportation Center to Shipoke because the trip was too short of a distance. Tr. 9. He testified that Mr. Elazouni instead loaded another passenger into his vehicle

at that time and ultimately offered to drop Mr. Dekok off at his house on his way to the other passenger's destination, but that Mr. Dekok refused this offer. Tr. 10. Mr. Elazouni, on the other hand, testified that he did not refuse to take Mr. Dekok to Shipoke due to the short distance of the trip. Tr. 35, 46. To the contrary, Mr. Elazouni stated that he already had another passenger who was getting into the other side of the cab. Tr. 35, 37, 40, 46. When discussing his interaction with Mr. Dekok and the other passenger, Mr. Elazouni stated, "I have a passenger in my cab. She was there before him from the other side. Tr. 46. He testified that he offered to take Mr. Dekok and his daughter along with the other passenger, but Mr. Dekok refused. Tr. 37.

Dekok testified that another passenger was loaded into Mr. Elazouni's vehicle when he was talking to Mr. Elazouni and taking pictures of him and the vehicle. Mr. Dekok stated, ". . . I photographed the PUC registration number on the cab, and then I got a picture from the side of him, and then he loaded another passenger into his cab right at that time." Tr. 10. I believe this may support, to a degree, Mr. Elazouni's claim that he already had another passenger. Mr. Dekok did not testify that another passenger approached Mr. Elazouni about a trip while he and Mr. Elazouni were talking. He merely stated that another passenger was loading into the cab right at that time. I believe this provides some support for Mr. Elanouzi's claim that he had already been engaged by another passenger when Mr. Dekok approached.

Admittedly, this is a close case. I believe, however, that the testimony of Mr. Elazouni on behalf of Capital City provided sufficient evidence to exceed the evidence presented by I&E. I note that neither party presented any rebuttal evidence to counter or rebut the other party's direct evidence. For example, if Mr. Dekok had been recalled following Mr. Elazouni's testimony and testified that the other passenger, in fact, did not approach Mr. Elazouni until after he had refused to transport Mr. Dekok, that would have provided additional evidence in support of I&E's position. Absent any such additional rebuttal evidence, however, I cannot conclude that I&E proved, by a preponderance of the evidence, that Mr. Elazouni illegally refused to provide service.

There was discussion and testimony offered during the hearing about Mr. Dekok's interaction with the drivers of the cars that were in front of the Respondent's cab in the cab line.

Mr. Dekok testified that, although Mr. Elazouni's cab was the last in the cab line at the time, he approached it first because it appeared to him that the other cabs already had passengers waiting to get in. Tr. 8-9. Mr. Elazouni, on the other hand, testified that it appeared to him that Mr. Dekok approached the other cars in line, but did not use those cabs. Tr. 33. He testified that Mr. Dekok was angry when he approached Mr. Elazouni's cab and merely asked why the other drivers would not take him to his home in Shipoke. Tr. 33-34. Mr. Elzaouni testified that he suggested it was due to the short duration of the trip. Tr. 34.

I do not believe, in light of the above discussion, that it is necessary to attempt to resolve this conflicting testimony or determine a finding of fact from this evidence. As noted, I believe that the evidence presented by Capital City on the issue of the reason that Mr. Elazouni did not take Mr. Dekok to his destination exceeded, by a small amount, the evidence presented by the Complainant. Mr. Dekok's testimony that he approached the Respondent's vehicle first, rather than the vehicles that were ahead of Mr. Elazouni in the cab line, does not rebut or otherwise call into question Mr. Elazouni's testimony that he initially turned down Mr. Dekok because another passenger was already getting into the vehicle on the other side.

For these reasons, I do not believe the Complainant proved, by a preponderance of the evidence, that the Respondent illegally refused to provide service.

CONCLUSIONS OF LAW

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

2. In proceedings involving an allegation that a public utility violated a lawful determination or order of the Commission, the burden of proof is on the utility to show that the determination or order has been complied with. 52 Pa.Code §315(b). Additionally, where, upon motion of the Commission involving the service or facilities of a public utility, the burden of proof is likewise upon the utility to show that its service and facilities are adequate, efficient, safe and reasonable. 52 Pa.Code §315(c).

3. This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), *alloc, denied*, 602 A.2d 863 (1992).

4. A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854, 1950 Pa. LEXIS 316 (1950).

5. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *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. § 704.

6. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (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).

7. The offense complained of must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

8. The Complainant failed to prove, by a preponderance of the evidence, that the Complainant illegally refused to provide service to a passenger who requested service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement against Capital City Cab Service at Docket No. C-2015-2464291 is denied.

2. that the Commission mark the proceeding at Docket No. C-2015-2464291 closed.

Dated: July 11, 2016

/s/

Steven K. Haas
Administrative Law Judge