**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held September 1, 2016

|  |  |
| --- | --- |
| Commissioners Present:Gladys M. Brown, ChairmanAndrew G. Place, Vice ChairmanJohn F. Coleman, Jr. Robert F. PowelsonDavid W. Sweet |  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v.Erie Transportation Services Inc.t/a Erie Yellow Cab |  C-2015-2498121  |
|  |  |
|  |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion for Default Judgment (Motion), filed on March 21, 2016, by the Commission’s Bureau of Investigation and Enforcement (I&E), relative to the above-captioned proceeding. No Answers to the Motion have been filed. For the reasons stated below, we shall grant the Motion and sustain the Complaint.

**Procedural History**

Erie Transportation Services Inc. t/a Erie Yellow Cab (Respondent) was issued a Certificate of Public Convenience (Certificate) on January 23, 1989, at Docket No. A-00108419, for truck and taxi authority. Complaint at 2.

On August 14, 2015, I&E filed the above-captioned Complaint. On August 17, 2015, the Secretary’s Bureau served the Complaint on the Respondent by certified mail. On August 19, 2015, the Respondent signed a receipt confirming that it received the Complaint. Motion at 1. A copy of proof of delivery of the Complaint was attached to the Motion.

In the Complaint, I&E alleged that the Respondent violated Section 510(c) of the Public Utility Code (Code), 66 Pa. C.S. § 510(c), by failing to pay its outstanding assessment balance of $19,157 for the 2014-2015 Fiscal Year. I&E recommended a civil penalty of $2,874 for this violation.[[1]](#footnote-1) Complaint at 3-4.

I&E requested that the Respondent be ordered to pay a total of $22,031, consisting of its outstanding assessment balance of $19,157 and a civil penalty of $2,874 for the alleged violations. I&E also requested that, if the Respondent did not pay the assessment and civil penalty, the Commission issue an Order cancelling the Respondent’s Certificate. *Id*. at 5.

A Notice was attached to the Complaint and informed the Respondent that it must file an Answer within twenty days of the date of service of the Complaint. The Notice also informed the Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint. No Answer to the Complaint was filed. On or about January 21, 2016, the Commission received partial payment from the Respondent in the amount of $12,000, which satisfied part of the outstanding assessment balance for the 2014-2015 year. However, the Respondent has not paid the remaining assessment balance of $7,157 and the civil penalty of $2,874 that was requested in the Complaint. Motion at 2.

 As stated above, I&E filed its Motion on March 21, 2016. No Answer to the Motion has been filed.

**Discussion**

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

In its Motion, I&E states that the twenty-day time frame for filing an Answer to the Complaint expired and the Respondent did not filed an Answer. I&E also states that the Respondent did not pay its remaining outstanding assessment balance of $7,157 and the civil penalty of $2,874 that it requested in its Complaint. Motion at 2. Accordingly, I&E requests that the Commission enter a Default Order against the Respondent that: (1) directs the Respondent to pay its outstanding assessment and civil penalty within thirty days of the entry date of this Opinion and Order; and (2) directs the Bureau of Technical Utility Services to cancel the Respondent’s Certificate if the past-due assessment and civil penalty is not timely paid. *Id.*

Based on our review of the record and the averments in I&E’s Motion, we shall grant the Motion. Pursuant to Section 5.61(c) of our Regulations, 52 Pa. Code § 5.61(c), a Respondent who fails to file an Answer within the twenty-day response period may be deemed in default and the relevant facts stated in the Complaint may be deemed admitted. The Commonwealth Court has upheld our authority to sustain complaints that are not answered within twenty days. *See*, *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). The Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond and to request a hearing. The Respondent was also clearly advised that if it did not file an Answer within twenty days, then I&E would request that we issue an Order imposing the penalties set forth in the Complaint. Under the circumstances in this case, we find that it is appropriate to sustain the Complaint.

**Conclusion**

Based on our review of the record, the averments in the Motion and the applicable law, we shall grant I&E’s Motion and sustain the Complaint, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Default Judgment filed by the Bureau of Investigation and Enforcement on March 21, 2016, is granted, consistent with this Opinion and Order.

2. That the allegations in the Bureau of Investigation and Enforcement’s Complaint are deemed admitted, and the Complaint is thereby sustained.

3. That, within thirty (30) days of the entry date of this Opinion and Order, Erie Transportation Services Inc. t/a Erie Yellow Cab shall remit $10,031, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA, 17105-3265

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

5. That a copy of this Opinion and Order shall be served upon the Bureau of Technical Utility Services for monitoring of compliance.

6. That if Erie Transportation Services Inc. t/a Erie Yellow Cab fails to make the payment required by Ordering Paragraph No. 3 above, within thirty (30) days of the entry date of this Opinion and Order, it is further ordered:

a. That the Bureau of Technical Utility Services shall cancel the Certificate of Public Convenience held by Erie Transportation Services Inc. t/a Erie Yellow Cab at Docket No. A‑00108419, without further action by this Commission;

b. That the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action; and

c. That a copy of this Opinion and Order shall be served upon the Pennsylvania Department of Transportation, pursuant to Chapter 13 of the Vehicle Code, 75 Pa. C.S. §§ 1301-1379, and the Commission will request that the Pennsylvania Department of Transportation put an administrative hold on Erie Transportation Services Inc. t/a Erie Yellow Cab’s vehicle registrations. Erie Transportation Services Inc. t/a Erie Yellow Cab will not be able to register any new vehicles or renew any existing vehicle registrations until all past due assessments are paid, all insurance filings are up to date, and it holds an active Certificate of Public Convenience issued by this Commission.

7. That, after Erie Transportation Services Inc. t/a Erie Yellow Cab remits $10,031 as required by Ordering Paragraph No. 3, the Secretary’s Bureau shall mark this proceeding closed.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: September 1, 2016

ORDER ENTERED: September 1, 2016

1. I&E’s recommended $2,874 civil penalty is approximately 15% of the $19,157 outstanding assessment amount originally owed for the 2014-2015 Fiscal Year. [↑](#footnote-ref-1)