**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held September 15, 2016 |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  John F. Coleman, Jr.  Robert F. Powelson  David W. Sweet |  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  V.  Ronald L. Hershey t/a Action Courier Team Service | C-2015-2493940 |
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**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 by the Commission’s Bureau of Investigation and Enforcement (I&E) on January 4, 2016, relative to the above-captioned proceeding. No Answer to the Motion was filed. For the reasons stated below, we shall grant the Motion and sustain the Complaint, consistent with the following discussion.

**Procedural History**

Ronald L. Hershey t/a Action Courier Team Service (Respondent) was issued a Certificate of Public Convenience (Certificate) on November 9, 2004, at Docket No. A‑00121079, for truck authority.

On July 21, 2015, I&E filed the above-captioned Complaint. On July 22, 2015, the Secretary’s Bureau served the Complaint on the Respondent by certified mail. On July 23, 2015, the Respondent received the Complaint. Motion at 1. A copy of proof of delivery of the Complaint is attached to the Motion.

In the Complaint, I&E alleged that the Respondent violated Section 510(b) of the Public Utility Code (Code), 66 Pa. C.S. § 510(b), by failing to file an assessment report demonstrating its gross intrastate operating revenue for the 2013 calendar year. I&E recommended a civil penalty of $1,000 for this violation. In addition, I&E alleged that the Respondent violated Section 510(c) of the Code, 66 Pa. C.S. § 510(c), by failing to pay the Commission’s assessment for fiscal year July 1, 2014 to June 30, 2015. The total outstanding assessment balance is $119. I&E recommended a civil penalty of $30 for this violation.[[1]](#footnote-1) Complaint at 4-5.

I&E requested that the Respondent be ordered to pay a total of $1,149, consisting of the outstanding assessment balance of $119 and a civil penalty of $1,030 for the alleged violations. I&E also requested that, if the Respondent did not pay the civil penalty and the assessment, the Commission issue an Order cancelling the Respondent’s Certificate. *Id*. at 5-6.

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.

On March 29, 2016, the Respondent’s Certificate was cancelled for failure to maintain evidence of insurance with the Commission.

As stated above, I&E filed its Motion on January 4, 2016.

On July 25, 2016, the Respondent returned its unpaid General Assessment Invoice for the Fiscal Year July 1, 2015 to June 30, 2016 to the Commission. The Respondent hand-wrote on the Invoice that it has been out of business for more than two years.

**Discussion**

We note that any issue that 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 has expired and the Respondent did not file an Answer. I&E also states that the Respondent did not pay its outstanding assessment balance of $119, and the civil penalty of $1,030, that was requested in the Complaint. Motion at 2. Accordingly, I&E requests that the Commission enter a Default Order against the Respondent that directs the Respondent to pay its outstanding assessment and civil penalty within thirty days of the entry date of this Opinion and Order. *Id*.

On March 29, 2016, the Respondent’s Certificate was cancelled for failure to maintain evidence of insurance with the Commission. In light of this, I&E’s request in its Complaint that the Commission cancel the Respondent’s Certificate if the outstanding assessment balance and civil penalty are not paid, is moot. The remainder of I&E’s requests in its Complaint and Motion, including the request that the Respondent be directed to pay its outstanding assessment balance and the $1,030 civil penalty, remain ripe for our consideration and disposition.

As noted, on July 25, 2016, the Respondent sent a hand-written note to the Commission stating that it has been out of business for more than two years. However, nothing in our records indicate that the Respondent ever filed for abandonment of its Certificate prior to the July 25, 2016 hand-written note. Therefore, the Respondent ha an active Certificate until it was cancelled on March 29, 2016.

We emphasize that if the Respondent files for Reinstatement of its Certificate, it will be required to pay any outstanding assessment balance and civil penalties that it owes to the Commission at that time before we will consider its request for reinstatement.

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, 797 (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 consistent with this Opinion and Order.

**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 January 4, 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, consistent with this Opinion and Order.

3. That, within thirty days of the entry date of this Opinion and Order, Ronald L. Hershey t/a Action Courier Team Service shall remit $1,149, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

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 Ronald L. Hershey t/a Action Courier Team Service fails to make the payment required by Ordering Paragraph No. 3, above, within thirty days of the entry date of this Opinion and Order, then it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action.

7. That upon receipt of the payment of $1,149 by Ronald L. Hershey t/a Action Courier Team Service as directed by Ordering Paragraph No. 3, above, this proceeding be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 15, 2016

ORDER ENTERED: September 15, 2016

1. I&E’s recommended $30 civil penalty is approximately 25% of the $119 outstanding assessment amount due for the 2014-2015 fiscal year. The civil penalty is based, in part, on the Respondent’s history of noncompliance with the Code involving a failure to timely satisfy its assessment. [↑](#footnote-ref-1)