**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.  Hooters Hotshot, Inc. | C-2015-2495067 |
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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 December 31, 2015, 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, consistent with the following discussion.

**Procedural History**

Hooters Hotshot, Inc. (Respondent) was issued a Certificate of Public Convenience (Certificate) on February 4, 2010, at Docket No. A‑2009-2133612, for property authority.

On July 28, 2015, I&E filed the above-captioned Complaint. On July 28, 2015, the Secretary’s Bureau served the Complaint on the Respondent by certified mail. On August 24, 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 assessments for fiscal years July 1, 2013 to June 30, 2014 and July 1, 2014 to June 30, 2015. The total outstanding assessment balance is $1,462. I&E recommended a civil penalty of $219 for this violation.[[1]](#footnote-1) Complaint at 4-6.

I&E requested that the Respondent be ordered to pay a total of $2,681, consisting of the outstanding assessment balance of $1,462 and a civil penalty of $1,219, 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 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 August 5, 2015, 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 December 31, 2015. Answers to the Motion have not been filed.

**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 $1,462 and the civil penalty of $1,219 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 August 5, 2015, the Respondent’s Certificate was cancelled for failure to maintain evidence of insurance with the Commission. In light of this action, 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 $1,219 civil penalty, remain ripe for our consideration and disposition.

We emphasize that if the Respondent files for Reinstatement of its Certificate, it will be required to pay any outstanding assessment balance and the 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 December 31, 2015, 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, Hooters Hotshot, Inc. shall remit $2,681, 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 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 Hooters Hotshot, Inc. 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 $2,681 by Hooters Hotshot, Inc. as directed by Ordering Paragraph No. 3, above, this proceeding is marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 15, 2016

ORDER ENTERED: September 15, 2016

1. I&E’s recommended $219 civil penalty is approximately 15% of the $1,462 outstanding assessment amount due for the 2013-2014, and 2014-2015 fiscal years. [↑](#footnote-ref-1)