

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF INVESTIGATION	:	
AND ENFORCEMENT,	:	
	:	
Complainant	:	
	:	
v.	:	No. C-2015-2498121
	:	
ERIE TRANSPORTATION SERVICES, INC.	:	
t/a ERIE YELLOW CAB,	:	
	:	
Respondent/Petitioner	:	

PETITION FOR RELIEF PURSUANT TO 52 PA. CODE SECTION 5.572

AND NOW, comes the Petitioner, Erie Transportation Services, Inc. t/a Erie Yellow Cab (hereinafter “Petitioner”), by and through his counsel, Paul S. Guarnieri, Esquire and Malone Middleman, P.C., and files the within Petition for Relief Pursuant to 52 Pa.Code §5.572 as follows:

BACKGROUND

1. On August 14, 2015, the Bureau of Investigation and Enforcement (“I&E”) filed a Complaint against Petitioner in the above referenced matter alleging that Petitioner violated §510(c) of the Public Utility Code, 66 Pa.C.S. §510(c) by failing to pay an outstanding assessment balance of \$19,157.00 for the fiscal year 2014-2015.
2. On March 21, 2016, I&E filed a Motion for Default Judgment for Petitioner’s failure to file an Answer to the I&E Complaint.
3. By Opinion and Order dated September 1, 2016, the Commission granted the default judgment and ordered Petitioner to pay \$10,031 within thirty (30) days of the Order. (*Opinion and Order*, ¶ 3). Additionally, Paragraph 6 of the Order provides, *inter alia*, as follows:

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.

(Opinion and Order, ¶ 6).

3. 52 Pa.Code §5.572 (a) provides as follows:

(a) Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

4. 66 Pa.C.S. §703 provides, in part, as follows:

The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

5. Petitioner submits this Petition for Relief Pursuant to 52 Pa.Code §5.572 as a

Petition for Reconsideration and/or to amend the Commission Order dated September 1, 2016.

REASONS FOR RECONSIDERATION/AMENDMENT

6. Initially, Petitioner does not challenge the factual or legal basis to enter the Default Order. Petitioner acknowledges that it is responsible for the assessment of \$7,157 and the civil penalty of \$2,874.

7. Instead, Petitioner is requesting that the Commission reconsider and/or amend paragraph 3 of the order providing for payment of the assessment and civil penalty within thirty (30) days, and the cancellation provision of paragraph 6(a) for failure to pay within thirty (30) days, to allow for additional time to make the payment.

8. Petitioner is requesting additional time to pay the assessment and penalty because it has sustained significant losses of income in the past three years as a result of elimination Fuel Cost Recovery Surcharge (Fuel Surcharge) at Docket No.: S.P. 28209 in June 2013, and the introduction of TNC services into Petitioner's service territory. Specifically:

a. Petitioner, who was uncounseled, attempted to obtain a tariff increase dating back to June 27, 2013;

b. An increase was finally obtained on October 6, 2014 at Docket No.: R-2014-2438024, but during that time, Petitioner lost significant revenue that had previously been generated by the Fuel Surcharge; and

c. In April 2015, TNC service was introduced into Petitioner's service territory that has resulted in a significant reduction in revenues. Petitioner continues to attempt to restructure its operations to account for the impact that the new TNC service has had on its operations.

9. While Petitioner did not file an answer to the I&E Complaint, Petitioner did make a good faith effort to address the assessment by making a significant payment of \$12,000 towards the \$19,157 assessment owed during the pendency of this action. (Motion for Default Judgment, ¶ 10). This payment amounted to 62.64% of the assessment owed.

10. Petitioner is having difficulty raising the money to make the payment of the \$7,157 and the civil penalty of \$2,874 (\$10,031) by October 1, 2016.

11. Petitioner is requesting that the Commission grant him leave to make monthly payments of \$1,000 to satisfy the 2014-2015 assessment and civil penalty.

12. Petitioner's violation of Section 510(c) of the Public Utility Code, 66 Pa. C.S. § 510(c) did not involve the safety of the public or service issues.

13. Granting the relief requested herein will not negatively impact upon the safety of the public or the continuity of service.

Wherefore, Petitioner respectfully requests that the Commission grant this Petition for Reconsideration/Amendment of its Opinion and Order dated September 1, 2016, by amending Paragraph 3 and 6 of the Order so as to provide for payment of the assessment and civil penalty in monthly installments of not less than \$1,000 until paid in full.

Respectfully submitted,

MALONE MIDDLEMAN, P.C.

Date: September 16, 2016

By: /s/ Paul S. Guarnieri
Paul S. Guarnieri, Esquire
Attorneys for Petitioner

MALONE MIDDLEMAN, P.C.
Wexford Professional Building III
11676 Perry Highway, Ste. 3100
Wexford, PA 15090
(724) 934-6888
Guarnieri@mlmpclaw.com

VERIFICATION

I, Mark J. McEnery, President of Erie Transportation Services, Inc. t/a Erie Yellow Cab, have read the foregoing Petition for Relief. The statements herein are correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

ERIE TRANSPORTATION SERVICES,
INC., t/a ERIE YELLOW CAB

BY:



Mark J. McEnery, President

Date: 9/16/16

CERTIFICATE OF SERVICE

I hereby certify that I have, this 16th day of September 2016, served a copy of the above Petition For Relief upon all counsel of record by electronic and first class, United States Mail, postage pre-paid, addressed as follows:

Kourtney L. Myers, Esquire
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
komyers@pa.gov

/s/ Paul S. Guarnieri
Paul S. Guarnieri, Esquire