



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

September 26, 2016

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation  
and Enforcement v. Erie Transportation Services Inc. t/a Erie Yellow  
Cab  
Docket No. C-2015-2498121

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Answer of the Bureau of Investigation and Enforcement to the Petition for Reconsideration of Erie Transportation Services Inc. t/a Erie Yellow Cab in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Myers", is written over a light blue grid background.

Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Prosecutor for the Bureau of  
Investigation and Enforcement

Enclosure

cc: Cheryl Walker Davis, OSA  
As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	
Commission, Bureau of Investigation	:	
and Enforcement	:	
	:	Docket No. C-2015-2498121
v.	:	
	:	
Erie Transportation Services Inc.	:	
t/a Erie Yellow Cab	:	

**ANSWER OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
IN OPPOSITION TO THE PETITION OF  
ERIE TRANSPORTATION SERVICES INC. T/A ERIE YELLOW CAB  
FOR RECONSIDERATION OF THE COMMISSION'S  
SEPTEMBER 1, 2016 ORDER**

TO THE HONORABLE COMMISSION:

Pursuant to 52 Pa. Code § 5.572(e), the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) hereby submits its Answer to the Petition for Reconsideration (Petition) of the Commission's September 1, 2016 Opinion and Order (September 1, 2016 Order) in the above-captioned proceeding filed by Erie Transportation Services Inc. t/a Erie Yellow Cab (Erie Transportation, the Company, or Petitioner). In support of this Answer, I&E avers as follows:

**I. INTRODUCTION**

For the July 1, 2014 to June 30, 2015 Fiscal Year (2014-2015 Fiscal Year), the Commission invoiced Erie Transportation an assessment in the amount of \$19,157 that was based on the Company's *reported* gross intrastate operating revenues for the 2013 calendar year. Erie Transportation received the 2014-2015 Fiscal Year Assessment

Invoice by certified mail on September 19, 2014. Pursuant to Section 510(c) of the Public Utility Code (Code), 66 Pa.C.S. § 510(c), Petitioner was required to pay the assessment within thirty (30) days of receipt of the assessment invoice or by October 20, 2014.

When it became apparent that such payment was not forthcoming, I&E filed a Complaint against Erie Transportation on August 14, 2015, alleging that the Company violated Section 510(c) of the Code, 66 Pa.C.S. § 510(c), by failing to pay its assessment invoice for the 2014-2015 Fiscal Year totaling \$19,157. In addition to payment of the outstanding assessment, I&E sought a civil penalty in the amount of \$2,874 for Petitioner's violation of Section 510(c) of the Code. I&E also requested that if payment of the assessment and civil penalty was not made, that the Commission revoke Erie Transportation's Certificate of Public Convenience (Certificate), refer the matter to the Pennsylvania Office of Attorney General for further action, and certify Petitioner's automobile registrations to the Pennsylvania Department of Transportation (PennDOT) for suspension or revocation.

Although I&E's Complaint was served to Erie Transportation by certified mail and Petitioner signed a form acknowledging receipt of the Complaint, Petitioner did not answer the Complaint.

On January 21, 2016, approximately five (5) months after I&E initiated the Complaint in this matter, Erie Transportation submitted partial payment to the Commission in the amount of \$12,000 to be applied towards its outstanding assessment for the 2014-2015 Fiscal Year.

On March 21, 2016, I&E filed a Motion for Default Judgment. Petitioner took no action in response to I&E's Motion for Default Judgment, including answering the motion or paying its remaining, outstanding assessment balance of \$7,157 for the 2014-2015 Fiscal Year or the civil penalty of \$2,874.

On September 1, 2016, the Commission entered an order granting I&E's Motion and sustaining I&E's Complaint. The Commission directed Erie Transportation to remit a total of \$10,031, which consists of Petitioner's outstanding assessment balance of \$7,157 related to the 2014-2015 Fiscal Year and the requested civil penalty of \$2,874 within thirty (30) days of the entry of the September 1, 2016 Order. The September 1, 2016 Order further stated that if Petitioner fails to make payment, then Petitioner's Certificate would be cancelled and the Commission would request that PennDOT place an administrative hold on Petitioner's vehicle registrations.

On September 16, 2016, Erie Transportation filed a Petition for Reconsideration of the Commission's September 1, 2016 Order.

## **II. STANDARD OF REVIEW**

Subsection 703(g) of the Public Utility Code, 66 Pa.C.S. § 703(g) establishes a party's right to seek relief following the issuance of final decisions and permit the Commission to rescind and amend orders. Petitions for reconsideration are governed by *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (Order entered December 17, 1982), which establishes a two-step analysis in determining whether to amend or rescind prior orders. First, the Commission determines whether there is newly discovered evidence, errors of law, or changes in circumstances that warrant other

Commission review or whether the petition raises “new and novel” arguments or identifies considerations that appear to have been overlooked or not addressed in a previous order. *Duick*, 56 Pa. P.U.C. at 559. The second step of *Duick* is to evaluate the new or novel argument or overlooked consideration in order to determine whether to exercise discretion to modify the previous Commission order. *Id.* Reconsideration is not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Id.* (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm’n*, 179 A. 850, 854 (Pa. Super. 1935)).

### III. ARGUMENT

The arguments raised in Erie Transportation’s Petition are undoubtedly new, since the Company failed to answer every prior pleading in this matter. However, the arguments advanced by Erie Transportation to justify reconsideration should not be considered at such a late stage as the Company has failed to properly raise them in prior pleadings. Even if Erie Transportation’s arguments could be raised at this time, such arguments have already been expressly rejected by the Commission in prior cases. Additionally, in its Petition, the Company *acknowledges* that it is responsible for its remaining, outstanding assessment balance of \$7,157 related to the 2014-2015 Fiscal Year and the requested civil penalty of \$2,874. Therefore, Petitioner admits that it violated Section 510(c) of the Code, 66 Pa.C.S. § 510(c).

Erie Transportation’s request for additional time to pay its outstanding assessment and civil penalty should be denied. The language of Section 510(c) of the Code mandates that public utilities pay the Commission’s assessment within thirty (30) days of receipt of

assessment invoices. *See also Richard Rickabaugh and Emanuel Rickabaugh t/a St. Topaz Limousine Service*, Docket No. A-00107047 (Order entered July 27, 1989) (holding that although the Commission is empowered to waive its own regulations, it may not waive a statutory requirement). In *Pa. P.U.C. v. Lou Lane, Inc., t/a All Star Limousines*, Docket No. C-2011-2230353 (Order entered December 5, 2013), the Commission stated that it “is not in the business of providing interest free loans to utilities, and it is mandatory that assessments are timely paid by all utilities so that the Commission can effectively carry out its duties.”

Erie Transportation received its 2014-2015 Fiscal Year Assessment Invoice by certified mail on September 19, 2014. *See* I&E’s Complaint at para 13. Pursuant to Section 510(c) of the Code, 66 Pa.C.S. § 510(c), Petitioner was required to pay the assessment within thirty (30) days of receipt of the assessment invoice or by October 20, 2014. To date, Erie Transportation’s 2014-2015 Fiscal Year Assessment is almost two (2) years past due. Therefore, Petitioner should have been well aware of its obligation to timely pay its 2014-2015 Fiscal Year Assessment and was provided with ample opportunity and time to satisfy its outstanding assessment prior to and during the course of this proceeding.

Likewise, Erie Transportation’s request to make monthly payments of \$1,000 to satisfy its 2014-2015 Fiscal Year Assessment and the requested civil penalty should be denied. The Commission has already decided the precise issue of whether to allow utilities, on a case-by-case basis, the ability to pay delinquent assessments in installments and the Commission rejected this idea. *See Lou Lane*, Docket No. C-2011-2230353

(Order entered December 5, 2013). In *Lou Lane*, the Commission held that overdue assessments, barring compelling or extraordinary circumstances, must be made by a single payment. *Id.* The reason for this policy is that a utility's failure to timely pay its assessments imposes a burden not only on those utilities who promptly pay their assessments, but upon the Commission and the orderly execution of its duties and responsibilities. *Id.*

Erie Transportation's averments regarding its financial position and inability to pay its 2014-2015 Fiscal Year Assessment due to the termination of the Fuel Cost Recovery Surcharge (Fuel Surcharge) at Special Permission No. 28209 on June 30, 2013 and the introduction of transportation network company (TNC) services into the Company's service territory in April 2015 do not constitute compelling or extraordinary circumstances. In *Lou Lane*, Docket No. C-2011-2230353 (Order entered December 5, 2013), the Commission found that financial difficulties due to an economic recession and an increase in costs did not constitute extraordinary circumstances. *See also Pa. P.U.C. v. Penn-Harris Taxi Service Co.*, Docket No. A-00002450C9801 (Order entered September 28, 1998).

Additionally, Petitioner's 2014-2015 Fiscal Year Assessment was based on its *reported* gross intrastate operating revenues for the 2013 calendar year in accordance with Section 510 of the Code, 66 Pa.C.S. § 510. Therefore, if Petitioner did in fact sustain significant losses of income during the 2013 calendar due to the termination of the Fuel Surcharge, then such loss was taken into consideration as Petitioner's 2014-2015

Fiscal Year Assessment was based upon the revenues that Petitioner *reported* to the Commission for the 2013 calendar year.

Further and as noted above, Erie Transportation's 2014-2015 Fiscal Year Assessment was due in full on or before October 20, 2014. Therefore, the obligation to pay the outstanding assessment in this matter arose well before the time Petitioner alleges that TNC service was introduced into its service territory. Moreover, the financial challenges and industry competition that Erie Transportation claims it has faced are no different from those faced by many other certificated motor carriers, including those certificate holders who *timely* paid their assessments.

#### **IV. BACKGROUND**

1. Admitted.
2. Admitted.
3. Admitted.
- a. The Commission's September 1, 2016 Order speaks for itself.
- b. The Commission's September 1, 2016 Order speaks for itself.
- c. The Commission's September 1, 2016 Order speaks for itself.
4. No response to Paragraph 4 [*sic* 3]<sup>1</sup> is required. The regulation speaks for itself.
5. No response to Paragraph 5 [*sic* 4] is required. The statute speaks for itself.
6. Paragraph 6 [*sic* 5] is admitted in part and denied in part. It is admitted that

---

<sup>1</sup> Erie Transportation's Petition is misnumbered after Paragraph 3. I&E has numbered its Answer to the Petition according to the correct paragraph numbers for the Petition.

Petitioner filed a Petition for Reconsideration of the Commission's September 1, 2016 Order. It is denied that such Petition should be granted.

**V. REASONS FOR RECONSIDERATION/AMENDMENT**

7. Paragraph 7 [*sic* 6] is admitted. By way of further answer, it is undisputed that Petitioner did not pay its remaining, outstanding assessment of \$7,157 related to the 2014-2015 Fiscal Year or the requested civil penalty of \$2,874.

8. Paragraph 8 [*sic* 7] is denied. It is denied that Petitioner should be provided with additional time to make payment of its 2014-2015 Fiscal Year Assessment and the requested civil penalty. Section 510(c) of the Code mandates that assessments be paid by all utilities within thirty (30) days of receipt of the assessment invoice. *See also, e.g., Richard Rickabaugh*, Docket No. A-00107047 (Order entered July 27, 1989); *Lou Lane*, Docket No. C-2011-2230353 (Order entered December 5, 2013). Petitioner has been provided with more than enough time and opportunity to pay its remaining, outstanding assessment balance related to the 2014-2015 Fiscal Year and the requested civil penalty prior to and during the course of this proceeding, but has failed to do so.

9. Paragraph 9 [*sic* 8] is denied. I&E hereby incorporates its response to Paragraph 8. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to Petitioner's significant loss of income during the past three (3) years due to the termination of the Fuel Surcharge and the introduction of TNC services into Petitioner's service territory. To the extent a response is required, this allegation is denied. By way of further answer, Petitioner had ample time and opportunity to raise

such arguments in prior pleadings, but failed to do so, and therefore, such argument should not be considered at this late stage.

- a. Admitted in part and denied in part. It is admitted that Petitioner filed a tariff increase at Docket No. R-2013-2371846, which proposed an increase in revenues of an undetermined amount by assessing a fuel surcharge. It is denied that such proposal dates back to June 27, 2013, as Petitioner filed its request on June 25, 2013.
  - b. Admitted in part and denied in part. It is admitted that on October 6, 2014, the Commission approved Petitioner's tariff increase at Docket No. R-2014-2438024, which proposed a fuel surcharge. As to the remainder of this subparagraph, I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted. To the extent a response is required, this allegation is denied. By way of further answer, Petitioner had ample time and opportunity to raise such argument in prior pleadings, but failed to do so, and therefore, such argument should not be considered at this late stage.
  - c. Denied. I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted. To the extent a response is required, these allegations are denied. By way of further answer, Petitioner had ample time and opportunity to raise such argument in prior pleadings, but failed to do so, and therefore, such argument should not be considered at this late stage.
10. Paragraph 10 [*sic* 9] is admitted in part and denied in part. It is admitted

that Petitioner did not file an answer to I&E's Complaint. It is also admitted that Petitioner made a *partial* payment of \$12,000 on January 21, 2016. It is denied that the partial payment made by Petitioner constitutes a good faith effort to address the assessment because at the time Petitioner finally made a payment towards its outstanding assessment, such assessment was already over a year past due. Additionally, Petitioner has taken no further action to make any additional payment towards its outstanding assessment balance or the requested civil penalty and to date, Petitioner's outstanding assessment of \$7,157 remains unpaid and is now almost two (2) years past due.

11. Paragraph 11 [*sic* 10] is denied. I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted. To the extent a response is required, this allegation is denied. By way of further answer, Petitioner had ample time and opportunity to raise such argument in prior pleadings, but failed to do so, and therefore, such argument should not be considered at this late stage.

12. Paragraph 12 [*sic* 11] is denied. Assessments must be paid in a timely manner and delinquent amounts, barring extraordinary circumstances, must be made by a *single* payment. *See Lou Lane*, Docket No. C-2011-2230353 (Order entered December 5, 2013)(emphasis added).

13. Paragraph 13 [*sic* 12] is denied. By way of further answer, a violation of Section 510(c) of the Code, 66 Pa.C.S. § 510(c), adversely impacts the safety of the public. As the Commission is funded through assessments, it is the Commission's policy that all assessments are to be paid on time. Utilities are expected to pay their assessments in a timely manner because the operation of the Commission including oversight of

*safety* considerations present in the regulation of each utility depends upon it. *Pa. P.U.C. v. Scott A Dechert t/a Distinctive Limousine Service*, Docket No. C-2012-2334904 (Order entered October 17, 2013)(emphasis added). Moreover, in its Petition, Erie Transportation has repeatedly acknowledged that it violated the law and its statutory obligation under the Code at Section 510(c). Thus, enforcing the requirement that Petitioner immediately pay its overdue 2014-2015 Fiscal Year Assessment is lawful and necessary pursuant to Section 510(c) of the Code.

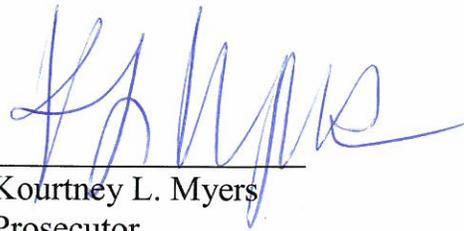
14. Paragraph 14 [*sic* 13] is denied. I&E hereby incorporates its response to Paragraph 13.

## **VI. CONCLUSION**

I&E respectfully submits that Erie Transportation had ample time to satisfy its outstanding assessment balance related to the 2014-2015 Fiscal Year prior to and during this proceeding to avoid the imposition of a civil penalty and revocation of its Certificate. However, the Company ignored this case until January 21, 2016 when it made a partial payment towards its outstanding assessment balance and then continued to ignore this case until the Commission's September 1, 2016 Order. Erie Transportation's 2014-2015 Fiscal Year Assessment is almost two (2) years past due and remains unpaid to date. Therefore, I&E asserts that Erie Transportation has not met the high standard for amending the Commission's Order.

**WHEREFORE**, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Commission deny the Petition for Reconsideration of Erie Transportation Services Inc. t/a Erie Yellow Cab.

Respectfully submitted,



Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

Michael L. Swindler  
Deputy Chief Prosecutor  
PA Attorney ID No. 43319

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 705-4366  
komyers@pa.gov

Dated: September 26, 2016

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement

v.

Erie Transportation Services Inc.  
t/a Erie Yellow Cab

:  
:  
:  
:  
:  
:  
:

Docket No. C-2015-2498121

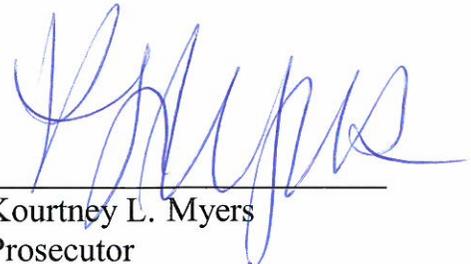
### CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by First Class Mail and Electronic Mail:

Paul S. Guarnieri, Esquire  
Malone Middleman, P.C.  
Wexford Professional Building III  
11676 Perry Highway, Suite 3100  
Wexford, PA 15090  
[Guarnieri@mlmpclaw.com](mailto:Guarnieri@mlmpclaw.com)

*Counsel for Erie Transportation Services Inc. t/a Erie Yellow Cab*



Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
717.705.4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

Dated: September 26, 2016