**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 12, 2017

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| 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.  Erie Transportation Services Inc.  t/a Erie Yellow Cab | C-2015-2498121 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Relief Pursuant to 52 Pa. Code § 5.572 (Petition), filed by Erie Transportation Services Inc. t/a Erie Yellow Cab (Petitioner or Erie Transportation) on September 16, 2016, seeking reconsideration and/or amendment of the Opinion and Order entered September 1, 2016 (*September 1, 2016 Order*), relative to the above-captioned proceeding. The Bureau of Investigation and Enforcement (I&E) filed an Answer to the Petition on September 26, 2016. For the reasons stated below we shall deny the Petition.

**Procedural History**

Erie Transportation was issued a Certificate of Public Convenience (Certificate) on January 23, 1989, at Docket No. A-00108419, for truck and taxi authority. On August 14, 2015, I&E filed the above-captioned Complaint alleging that the Petitioner 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 Erie Transportation 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 Petitioner did not pay the assessment and civil penalty, the Commission issue an Order cancelling the Petitioner’s Certificate. *Id*. at 5.

A Notice was attached to the Complaint and informed the Petitioner that it must file an Answer within twenty days of the date of service of the Complaint. The Notice also informed Erie Transportation 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 Petitioner in the amount of $12,000, which satisfied part of the outstanding assessment balance for the 2014-2015 year.

On March 21 2016, I&E filed a Motion for Default Judgment (Motion) stating that the twenty-day time frame for filing an Answer expired and that Erie Transportation did not file an Answer. I&E also averred that the Petitioner did not pay the remaining assessment balance of $7,157 and the civil penalty of $2,874 that was requested in the Complaint. Motion at 2. No Answer to the Motion was filed.

In the *September 1, 2016 Order*, we granted I&E’s Motion and directed Erie Transportation to pay its outstanding assessment and civil penalty within thirty days of entry of the Order. We also instructed the Bureau of Technical Utility Services (TUS) to cancel the Petitioner’s Certificate if the past-due assessment and civil penalty is not timely paid.

As indicated above, Erie Transportation filed its Petition on September 16, 2016, seeking additional time to pay the assessment and civil penalty set forth within Ordering Paragraph No. 3 of the *September 1, 2016 Order*.[[2]](#footnote-2) Alleging difficulties in making the payment in the time frame required by the *September 1, 2016 Order*, the Petitioner sought leave to make monthly payments of $1,000 to satisfy the outstanding assessment and civil penalty. I&E filed its Answer to the Petition on September 26, 2016, requesting that the Commission deny the Petition.

In our Order entered September 29, 2016 (*September 29, 2016 Order*), we granted the Petition pending further review of, and consideration on, the merits. Additionally, we considered the portion of the Petition requesting leave to make monthly payments as a request to extend the deadline for the payment of assessment and civil penalty pursuant to 52 Pa. Code § 1.15. In order to give the Commission an opportunity for thorough consideration of the Parties’ filings in this proceeding, and in light of the short time frame between the filing of the Answer to the above-referenced Petition (September 26, 2016) and the due date for the payment of the civil penalty (October 3, 2016), we found good cause to grant the request, in part. Thus, we extended the deadline stated in Ordering Paragraph No. 3 of the *September 1, 2016 Order* pending final disposition of the Petition. We also deferred consideration of the request to make monthly installments until we address the merits of the Petition. *September 29, 2016 Order* at 3-4.

On December 5, 2016, the Commission received a partial payment of $3,000 from Erie Transportation related to the proceeding. To date no further payments have been received and $7,031 of the unpaid assessment and civil penalty remains outstanding.

**Discussion**

**Legal Standards**

Before addressing the Petition, we note that any issue not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission,* 625 A.2d 741 (Pa. Cmwlth. 1993).

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f)

and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ….” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the commission.

*Duick,* 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

Regarding requests for extension of time to comply with a Commission directive, our Regulation at 52 Pa. Code § 1.15 states, in pertinent part:

Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended.

**Petition, Answer and Disposition**

The Petitioner does not challenge the factual or legal basis of the *September 1, 2016 Order* and admits that it is responsible for the full amount of the assessment and civil penalty set forth in the ruling. However, Erie Transportation requests additional time to pay the assessment and civil penalty arguing that it has sustained significant losses of income in the past three years due to the elimination of a “Fuel Cost Recovery Surcharge” and the entry of transportation network companies (TNC) into its service territory. Petition at 3.

In support, Erie Transportation avers the following:

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.

Petition at 3.

Additionally, the Petitioner argues that it made a good faith effort to address the assessment by making a significant payment of $12,000 towards its prior outstanding assessment of $19,157 which was owed during the pendency of this action. Erie Transportation contends that it is having difficulty raising the money to make the balance payment by the deadline set forth in the *September 1, 2017 Order*. For relief, the Petitioner requests leave to make monthly payments to satisfy the outstanding assessment and civil penalty. *Id.* 3-4.

In its Answer to the Petition, I&E objects to the Petitioner’s payment extension request. I&E argues that Erie Transportation has been provided with ample opportunity and time to satisfy its outstanding assessment, noting that the 2014-2015 assessment is almost two years past due. Additionally, I&E contends that the Commission has already rejected similar requests to permit utilities to pay delinquent assessments in installments. Answer to Petition at 5-6 (citing *Pa. PUC v. Lou Lane, Inc., t/a All Star Limousines*, Docket No. C-2011-2230353 (Order entered December 5, 2013) (*Lou Lane*)).

According to I&E, the Petitioner’s allegations regarding its financial position and inability to pay its assessments do not constitute compelling or extraordinary circumstances that could justify installment payments. I&E asserts that the Petitioner’s 2014-2015 assessment was based on its reported gross interstate operating revenues for the 2013 calendar year. I&E contends that if Erie Transportation sustained significant loss in income during 2013 due to the termination of the Fuel Surcharge, then such loss was taken into consideration because the 2014-2015 assessment was based on revenues that the Petitioner reported to the Commission for the 2013 calendar year. Regarding the introduction of TNC service in April 2015, I&E argues that Erie Transportation’s 2014‑2015 assessment was due on October 20, 2014. Thus, I&E proffers, the obligation to pay the outstanding assessment arose well before the time Petitioner alleges that TNC was introduced to its service territory. Answer to Petition at 6-7.

According to I&E, Erie Transportation ignored this proceeding until January 21, 2016, when it made a partial payment towards its outstanding assessment balance and, thereafter, continued to ignore the case until our *September 1, 2016 Order*. I&E asserts that the Petitioner has failed to meet the high standard for amending our prior Order and, thus, its Petition should be denied. Answer to Petition at 11.

Based on our review of the Petition and the Answer thereto, and in light of the record described in the proceeding, we find that the Petitioner has failed to allege any new or novel arguments such as would persuade us to reverse, modify or amend our *September 1, 2016 Order*. Thus, we shall decline to exercise our discretion to grant the requested relief and shall deny the Petition. Additionally, we find that Erie Transportation has failed to establish good cause to further extend the deadline for the payment of outstanding assessment and civil penalty pursuant to 52 Pa. Code § 1.15.

We have previously explained that assessments must be paid by all utilities within thirty days of a Commission notice unless the Commission states on all notices that installments will be accepted. *Lou Lane* at 6 (citing 66 Pa. C.S. § 510(c)). However, we have explained that Section 510(c) of the Code, authorizing installment payments, does not apply to the collection of past due amounts. “Assessments must be paid in a timely manner and delinquent amounts, barring extraordinary circumstances, must be made by a single payment. The burden is on the utility to demonstrate that there were extraordinary circumstances which prevented it from paying assessments on time.” *Id.* at 6-7.

Here, the Petitioner’s purported reasons for failing to pay its assessments on time do not, in our view, constitute extraordinary circumstances which would justify installment payments. The alleged decrease in revenue resulting from the elimination of the Fuel Cost Recovery Surcharge in 2013 should have been reflected in the Petitioner’s report of earnings filed with the Commission in 2013. Thus, the asserted decrease in revenue experienced in 2013 should have been reflected in the 2014-2015 assessment assigned to Erie Transportation. Additionally, the Petitioner’s allegations of financial hardship resulting from TNC competition are incongruous with the due date for paying the 2014-2015 assessment. As explained by I&E, Erie Transportation was required to pay its assessment in full by October 20, 2014, but the Petitioner alleges that TNC competition did not begin until 2015. Therefore, Erie Transportation has not shown extraordinary circumstances that would have prevented the Petitioner from paying its 2014-2015 assessment in full by the due date.

We acknowledge that the Commission received an additional payment of $3,000 from the Petitioner on December 5, 2016. However, Erie Transportation has made no further payments on its outstanding assessment and civil penalty balance of $7,031. Indeed, since the issuance of our *September 29, 2016 Order*, the Petitioner has effectively received more than nine additional months to satisfy the assessment and civil penalty set forth in the *September 1, 2016 Order*. As we explained in *Lou Lane*, “the Commission 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.” *Lou Lane* at 9. Accordingly, we shall deny the Petition and direct Erie Transportation to pay its outstanding assessment and civil penalty in full within twenty days of the entry of this Opinion and Order.

**Conclusion**

For the reasons discussed above, we shall deny the Petition consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Relief Pursuant to 52 Pa. Code § 5.572 filed by Erie Transportation Services Inc. t/a Erie Yellow Cab on September 16, 2016, is denied, consistent with this Opinion and Order.

2. That, within twenty (20) days of the entry date shown on the last page of this Opinion and Order, Erie Transportation Services Inc. t/a Erie Yellow Cab shall remit $7,031, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

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

4. That, if Erie Transportation Services Inc. t/a Erie Yellow Cab fails to make the payment required by Ordering Paragraph No. 2, above, within twenty (20) days of the entry date shown on the last page 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 past due fines are paid, all insurance filings are up to date, and it holds an active Certificate of Public Convenience issued by this Commission.

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. 2, above, within twenty (20) days of the entry date shown on the last page of this Opinion and Order, then all parties are hereby placed on notice of the Commission’s intent to consider pursuing all remedies, provided by law, including criminal prosecution as well as the initiation of an enforcement proceeding in the Commonwealth Court, pursuant to Pa. R.A.P. Rule 3761.

7*.* That upon receipt of the payment of $7,031 by Erie Transportation Services Inc. t/a Erie Yellow Cab as directed by Ordering Paragraph No. 2, above, this proceeding be marked closed.

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**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 12, 2017

ORDER ENTERED: July 13, 2017

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)
2. The ordering paragraph requires the remittance of $10,031 within thirty days of the entry of the *September 2016 Order* or by October 3, 2016. [↑](#footnote-ref-2)