

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Public Meeting held February 14, 2008

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Tyrone J. Christy
Kim Pizzingrilli

Petition for Emergency Relief of the Pennsylvania
Taxi and Paratransit Association

P-2008-2013624

RATIFICATION ORDER

BY THE COMMISSION:

On January 14, 2008, Chairman Wendell F. Holland issued an Emergency Order (EO), pursuant to our regulations at 52 Pa. Code § 3.3.¹ (“Attachment A”). The EO was issued in response to the Petition for Emergency Relief filed by the Pennsylvania Taxi and Paratransit Association (PTPA) on January 10, 2008. In its Petition, PTPA alleged that due to a change in the utility groupings and consequent change in assessment factors used by the Commission, its member assessments have increased by approximately 320%, creating a financial hardship on its members. PTPA requested an installment payment plan, rate relief, or any other relief the Commission deems appropriate.

In response to the PTPA Petition, Chairman Holland issued an EO which provided for an installment payment plan for motor carriers of passengers and railroads, if the utility so chooses. Additionally, the EO authorized motor carriers of passengers to add a temporary 1% surcharge to the final amount of each fare, with further guidance on the surcharge to be provided in this Ratification Order. Finally the EO directed the Commission’s Fiscal Office to issue

supplemental notices of assessment to each transportation utility, with the Commission accepting objections filed within 15 days of the supplemental notice as timely filed objections.²

By way of background, at the public meeting held August 8, 2007, the Commission determined the total amount to be assessed on all public utilities (\$49.5 million) for Fiscal Year 2007/08, and approved assessment factors for all public utilities except for transportation utilities, pending further review of how utilities in the transportation industry should be grouped. The Fiscal Office subsequently issued assessment bills to all fixed public utilities; however, no assessment bills were issued for the transportation portion of Commission budget (\$9.4 million).

At the public meeting held November 8, 2007, after further internal review, the Commission approved assessment factors for transportation utilities based on the use of three (3) utility groups in order to reflect more accurately the costs of regulation attributable to each group providing the same type of service.³ The utility groups used were: passenger motor carriers, property motor carriers, and railroads. The Fiscal Office then used these factors to calculate assessment bills for individual utilities and sent out notices of assessment and invoices by registered mail.⁴

Pursuant to Section 510(c), 66 Pa. C.S. § 510(c), receipt of the notice of assessment triggers the utility's obligation to pay the amount assessed within 30 days, and the utility's right to file objections within 15 days and the Commission's obligation to hold hearings on any timely

¹ A copy of the January 14, 2008 Emergency Order is attached.

² Issuance of the supplemental assessment notices was delayed pending this ratification of the emergency order.

³ Section 510(f) provides as follows: "It is the intent and purpose of [Section 510] that each public utility subject to [the Public Utility Code] shall advance to the commission its reasonable share of the cost of administering [the Public Utility Code]." 66 Pa. C.S. § 510(f).

⁴ Assessment invoices were not mailed to property carriers who provided information to the Fiscal Office adequate to verify their coverage under the federal Uniform Carrier Registration (UCR) Act and its preemptive provisions regarding state fees and assessments. 49 U.S.C. § 14504a. However, the Commission anticipates that it will be made whole for its costs for regulating these property carriers by Pennsylvania's participation in the UCR program effective January 1, 2008.

filed objections. As such, the statutory scheme provides for due process hearings regarding the amount of an assessment only after the assessment invoice has been received. In addition, the statutory scheme does not excuse the utility's obligation to pay the amount assessed while objections are pending. Rather, the amount assessed is subject to reconciliation and refund if the utility's objection is sustained in whole or in part by the Commission or on judicial review.

In general, the result of using three utility groups for the transportation industry has lowered the assessments for property motor carriers and substantially increased the assessments for passenger carriers and railroads. Numerous objections have been filed by passenger motor carriers and railroads challenging their increased assessments. In addition, we have received letters from the Keystone State Railroad Association (KSRRRA), the leadership of the Senate and House Transportation Committees, and the leadership of the Senate Consumer Protection and Professional Licensure Committee and House Consumer Affairs Committee raising issues of notice and urging us to, inter alia, maintain the single group approach until there has been a full opportunity for all stakeholders to address this issue.

At the public meeting held January 24, 2008, the Commission delayed ratification of the emergency order in order to provide more time to consider these important issues. Upon further consideration of these issues, the Commission will, by this Ratification Order, take action that will provide an open forum in which interested stakeholders can address equitable allocation of the Commission's costs of regulating the transportation industry, will hold the amount of assessment due to 1/3 of the amount currently assessed, and will result in a final adjudication on the allocation issue before any further assessment payments are due.

In particular, the Commission will refer all timely filed objections to the Office of Administrative Law Judge (OALJ) for hearing and decision.⁵ In addition, the Commission will direct OALJ to convene, on March 19, 2008, an on-the-record technical conference regarding transportation assessments, at which any interested person may participate by way of comments and/or sworn testimony. The Fiscal Office and interested parties will be required to file their

⁵ The objections will be consolidated for hearing purposes to the extent practicable.

comments or testimony in advance on or before March 14, 2008; at the technical conference, the participants will be organized into panels for purposes of making presentations to the Commission and will be subject to questions from the Commissioners.

Thereafter, OALJ will assign an ALJ who will hold such further evidentiary hearings as may be necessary to address and resolve any generic issues regarding transportation assessments (such as, utility groupings, computation of direct hours, etc.) raised in the technical conference and individual objections, and may assign other ALJs to address utility-specific issues (such as, intrastate revenues, timeliness of objections, etc.). The ALJ assigned to handle the technical conference and generic issues will schedule any further hearings, as necessary, and establish a briefing schedule that will enable the Commission to render a final adjudication on allocation of the transportation assessments by the public meeting scheduled for June 12, 2008.⁶

By this procedure, the Commission will have, in effect, delayed the normal due date for assessment payments by six (6) months and has opened up the process of determining the cost allocations and utility groupings to affected parties before any substantial increase becomes due. Thus, the Commission will render a final appealable order regarding the allocation of transportation assessments on or before June 12, 2008, which is before any subsequent assessment installment payment would be due.⁷

Pursuant to our regulations at 52 Pa. Code § 3.3, it is necessary for the full Commission to ratify an Emergency Order. After due consideration of the issues associated with this matter, we hereby adopt and ratify Chairman Holland's January 14, 2008 EO, as modified herein. The Commission will provide an installment payment plan, a temporary 1 % surcharge for passenger carriers, and re-issuance of the assessment invoices. In addition, the Commission will convene a technical conference on transportation assessments, to provide an open forum for all

⁶ In order to participate in these further hearings, the person must have filed a timely objection or a petition to intervene which has been granted. The Fiscal Office shall have automatic standing to participate.

⁷ In this ratification order we are revising the due date for the second installment payment to June 20, 2008 to allow more time between the Commission's final order and the second installment..

stakeholders, and schedule subsequent hearings to resolve all generic issues by the public meeting of June 12, 2008.

As indicated in the EO, we will also provide further guidance for the implementation of the 1% surcharge. The 1% surcharge is voluntary, left to the discretion of the carrier. If a carrier chooses to implement the surcharge, it may do so beginning March 1, 2008. The 1% surcharge is temporary, and will expire on March 1, 2009. Carriers wishing to continue the surcharge beyond March 1, 2009, must timely file a tariff revision with the Commission during the pendency of the temporary surcharge. Scheduled route, airport transfer, and paratransit carriers may include the 1% surcharge on each paying customer's fare for a particular trip. Limousine and group and party (15 passengers or less) carriers may add 1% to the total transportation charge billed. Finally, call or demand carriers may collect the 1% surcharge by either (1) adding a flat 1% surcharge to the total bill; or (2) recalibrating the meter to reflect the 1% surcharge.

The Commission appreciates the concerns raised regarding notice and the amount of the assessments billed for Fiscal Year 2007/08. While we are not, at this time, revising the amounts assessed, we are providing an open forum to address these concerns and a hearing schedule that can provide relief, if warranted by the facts and law, before the major portions of the increased assessments for passenger carriers and railroad are due;

THEREFORE,

IT IS ORDERED:

1. That the Emergency Order issued on January 14, 2008, and appended hereto as "Attachment A", is hereby ratified, as modified herein.

2. That an installment payment plan for motor carriers of passengers and railroads is granted for payment of the 2007/08 Commission assessment. Motor carriers of passengers

and railroads may pay their 2007/08 assessments in three (3) equal installments of 1/3 of the total assessment amount.

- (a) If a carrier chooses this option, the first payment is due on March 17, 2008.
Depending upon the outcome of the generic hearing regarding transportation assessments, the second payment is tentatively due on or before June 20, 2008, and the third payment is tentatively due on or before September 15, 2008.
- (b) If the utility does not elect the installment plan, the total amount assessed will be due on or before March 17, 2008.
- (c) Filing an objection does not eliminate a public utility's obligation to pay its assessment on the due dates permitted by this order.

3. That motor carriers of passengers are authorized to add a temporary 1% surcharge onto the final amount of each fare, as described in the body of this Ratification Order.

4. That the Fiscal Office shall issue supplemental notices of assessments to motor carriers of passengers and railroads. The Commission will accept objections filed within 15 days of the supplemental notices as timely filed objections.

5. That a "Generic Investigation Regarding Transportation Assessment" be initiated at Docket No. I-2008-2022003 to address and resolve common issues regarding transportation assessments and that this proceeding be assigned to the Office of Administrative Law Judge (OALJ) for hearing and decision.

6. That OALJ shall convene, on March 19, 2008, a technical conference regarding transportation assessments, at which any interested person may participate by way of comments and/or sworn testimony. An original and 9 copies of any comments and/or sworn testimony must be pre-filed on or before March 14, 2008, and be addressed to Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265 and reference Docket No. I-2008-2022003.

7. That OALJ shall assign an ALJ who will hold such further hearings as may be necessary to address and resolve any generic issues regarding transportation assessments and may assign other ALJs to address utility-specific issues. Petitions to intervene in the generic issues proceeding must be filed on or before March 10, 2008; the initial pre-hearing conference is scheduled for March 14, 2008.

8. That all assessment amounts paid are subject to reconciliation, refund and/or reassessment as may be directed by the Commission's final order following the technical conference and evidentiary hearings.

9. That the letters filed by the Keystone State Railroad Association, the leadership of the Senate and House Transportation Committees, and the leadership of the Senate Consumer Protection and Professional Licensure Committee and House Consumer Affairs Committee shall be made a part of the record in the technical conference and generic hearings.

10. That a copy of this Ratification Order be served on the PA Taxi and Paratransit Association, the Keystone State Railroad Association, the PA Motor Truck Association, and all utilities that have filed objections, and that notice of this order be published in the PA Bulletin and on the Commission's website.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: February 14, 2008

| ORDER ENTERED: February 14, 2008

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Petition for Emergency Relief of the Pennsylvania
Taxi and Paratransit Association.

P-2008-2013624

EMERGENCY ORDER

On January 10, 2008, the Pennsylvania Taxi and Paratransit Association (PTPA) filed a Petition for Emergency Relief with the Commission. In its petition, the PTPA alleges that it is a duly organized association whose members are taxi, limousine and paratransit operators licensed to operate within the Commonwealth of Pennsylvania and are regulated by the Commission. The PTPA alleges that on or about January 2, 2008, most, but not all of its members, received annual assessment invoices from the Commission for their 2007-2008 assessments. Payment of the assessment is due within 30 days of receipt of the invoice.

PTPA alleges that due to a change in the utility groupings and assessment factors used by the Commission, the assessments billed to its members have increased by approximately 320%. PTPA states that this significant increase has created a financial hardship on its members. PTPA requests an installment payment plan, rate relief, or any other relief the Commission deems appropriate.

At its public meeting held November 8, 2007, the Commission approved assessments factors for the transportation industry based on three (3) utility groups: motor carriers of property, motor carriers of passengers, and railroads. This grouping is consistent with prior Commission treatment of these utility groups for assessment purposes and reflects more accurately the costs of regulation attributable to transportation utility groups providing the same kind of service. Based on the Commission-approved assessment factors, the Fiscal Office then calculated the assessment bill for individual utilities, in accordance with the statutory formula, and mailed assessment notices and invoices to transportation utilities.

The Commission recognizes that the assessments charged to motor carriers of passengers and railroads have increased significantly over the prior year's assessments. And while the statutory scheme provides for after the fact hearings on timely filed objections, the amount billed must be paid within 30 days of the assessment notice and invoice, unless the Commission provides otherwise. In response to this increase, the Commission has been apprised by numerous motor passenger carriers, beyond PTPA, and railroads that immediate payment of the assessment is unduly burdensome due to the magnitude of the increase and the inability to prepare for such an increase.

Consistent with 66 Pa. C.S. §510(c), the assessment notices and invoices notified the utilities, *inter alia*, that payment of the assessment was due within 30 days of receipt of the invoice. In light of the significant increase and the limited ability of the utilities to budget for same, I find an emergency situation exists, as defined at 52 Pa. Code §3.1. Accordingly, I will order that the Commission allow motor carriers of passengers and railroads to pay their 2007-2008 assessments in three (3) equal installments of 1/3 each of the total assessment amount. If a carrier chooses this option, the first payment is due on March 15, 2008. The second payment is due on or before June 15, 2008. The third

payment is due on or before September 15, 2008. Otherwise, the total amount assessed will be due on or before March 15, 2008.

This action does not diminish the assessment obligations owed by these utilities, as set forth in their invoices but, rather, aids these transportation utilities in meeting their assessment obligations.

Additionally, I believe that an opportunity for immediate rate relief is warranted under these circumstances. The additional assessment amount required to be paid by motor carriers of passengers is substantial and undisputed, and is equal to 1% of each carriers' intrastate gross revenues.¹ I authorize motor carriers of passengers to add a temporary surcharge onto the final amount of each fare in order to bridge this revenue shortfall necessitated by the assessment. Further guidance on the effective date and mechanics of implementing the temporary surcharge will be provided in the Commission's January 24, 2008 ratification order.

Finally, I note that the assessment notice and invoices were mailed by the Fiscal Office during the year end holidays and that this may have adversely affected the ability of some carriers to exercise their right to file timely objections under the statute. In order to maximize the opportunity of carriers to challenge their assessments and have a hearing on their claims, I will direct the Fiscal Office to issue supplemental notices of assessment to each transportation utility. The Commission will accept objections filed within 15 days of the supplemental notice as timely filed objections; **THEREFORE,**

¹ Each utility's assessment is the product of the Commission-approved assessment factor, based on direct and indirect hours allocated to industry groups, and the utility's gross intrastate revenues from the prior calendar year, as reported to the Commission pursuant to Section 510(b). The assessment factor for passenger motor carriers increased from 0.002955350699 for fiscal year 2006/07 to 0.013160906903 for fiscal year 2007/08, which equates to an increase of approximately 1% of each carrier's gross intrastate revenues.

IT IS ORDERED:

1. That the Petition for Emergency Relief filed by PTPA is granted consistent with this emergency order.
2. That an installment payment plan for motor carrier of passengers and railroads is hereby granted for payment of the 2007-2008 Commission assessments. Motor carriers of passengers and railroads may pay their 2007-2008 assessments in three (3) equal installments of 1/3 of the total assessment amount. If a carrier chooses this option, the first payment is due on March 15, 2008. The second payment is due on or before June 15, 2008. The third payment is due on or before September 15, 2008. Otherwise, the total amount assessed will be due on or before March 15, 2008.
3. That motor carriers of passengers are authorized to add a temporary 1% surcharge onto the final amount of each fare; further guidance regarding implementation of the temporary surcharge will be provided in the January 24, 2008 ratification order.
4. That the Fiscal Office shall issue supplemental notices of assessment to each transportation utility; the Commission will accept objections filed within 15 days of the supplemental notice as timely filed objections

Date: January 14, 2008

Wendell F. Holland
Wendell F. Holland, Chairman