



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

August 27, 2012

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. Turtle Creek Industrial Railroad Company
Docket No.

Dear Secretary Chiavetta:

Enclosed for filing please find the Complaint in the above referenced case, along with the electronic filing confirmation page, on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie M. Wimer", is written over a light blue horizontal line.

Stephanie M. Wimer
Prosecutor
Attorney ID No. 207522

Counsel for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

N-O-T-I-C-E

A. **You must file an Answer within 20 days of the date of service of this Complaint.** The date of service is the mailing date as indicated at the top of the Secretarial Cover Letter for this Complaint and Notice. *See* 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense and must include the docket number of this Complaint. Your Answer must be verified and the **original and three copies** sent to:

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

Additionally, you must serve a copy on:

Wayne T. Scott
First Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty set forth in the Complaint.

C. You may elect not to contest this Complaint by paying the civil penalty and your outstanding assessment within 20 days. Your check or money order for the civil penalty and assessment should be payable to the Commonwealth of Pennsylvania and should be mailed to:

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

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. *See* 52 Pa. Code §§ 1.21-1.22.

G. Alternative formats of this material are available for persons with disabilities by contacting the Pennsylvania Public Utility Commission at 717-787-5620.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2012-
	:	
Turtle Creek Industrial Railroad	:	
Company	:	

COMPLAINT

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”), Bureau of Investigation and Enforcement (“I&E”), by its counsel, and files this Complaint against Turtle Creek Industrial Railroad Company (“Respondent”), pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701. In support of its Complaint, I&E respectfully represents the following:

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*
2. Complainant is the Commission’s Bureau of Investigation and Enforcement and is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308.2(a)(11).
3. Complainant is represented by:

Stephanie M. Wimer
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8839
stwimer@pa.gov

Wayne T. Scott
First Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.783.6150
wascott@pa.gov

4. Respondent is Turtle Creek Industrial Railroad Company and maintains its principal place of business at 2658 Jefferson Street, Box 518, Export, PA 15632-0518, Attention: Wayne Norris, President.
5. Respondent is a “public utility” as that term is defined at 66 Pa.C.S. § 102, as it is engaged in carrying passengers or goods by rail in the Commonwealth of Pennsylvania for compensation.
6. The Commission issued Respondent a certificate of public convenience on or about December 11, 1984, at A-00105299, for railroad authority.
7. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.
8. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.
9. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission’s authority, for violation(s) of the Public Utility Code and/or Commission regulations.
10. Respondent, in transporting property for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations.
11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

Factual Background

2007-2008 FISCAL YEAR

12. On or about December 21, 2007, the Commission sent Respondent, through certified mail, an assessment invoice for the July 1, 2007 to June 30, 2008 Fiscal Year. Respondent's assessment was \$2,821.
13. Accompanying the assessment invoice was a notice that informed Respondent that it was obligated to pay the amount listed on the assessment invoice within thirty (30) days.
14. The Commission received no objections from Respondent to the 2007-2008 Fiscal Year Assessment.
15. Respondent failed to pay the total amount set forth in its 2007-2008 Fiscal Year Assessment.

2008-2009 FISCAL YEAR

16. On or about February 15, 2008, the Commission mailed to Respondent an assessment report form for Respondent to report its 2007 calendar year revenues.
17. The assessment report form was accompanied by a letter, which notified Respondent that the report was due on or before March 31, 2008.
18. Respondent failed to file an assessment report to show its 2007 calendar year revenues.
19. On or about September 22, 2008, the Commission sent Respondent, through certified mail, an assessment invoice for the July 1, 2008 to June 30, 2009 Fiscal Year that was based, in part, on Respondent's estimated revenues for the 2007 calendar year. Respondent's assessment was \$3,681.
20. Accompanying the assessment invoice was a notice that informed Respondent that it was obligated to pay the amount listed on the assessment invoice within thirty (30) days.
21. The Commission received no objections from Respondent to the 2008-2009 Fiscal Year Assessment.
22. Respondent failed to pay the total amount set forth in its 2008-2009 Fiscal Year Assessment.

2009-2010 FISCAL YEAR

23. On or about September 17, 2009, the Commission sent Respondent, through certified mail, an assessment invoice for the July 1, 2009 to June 30, 2010 Fiscal Year. Respondent's assessment was \$1,042.
24. Accompanying the assessment invoice was a notice that informed Respondent that it was obligated to pay the amount listed on the assessment invoice within thirty (30) days.
25. The Commission received no objections from Respondent to the 2009-2010 Fiscal Year Assessment.
26. Respondent failed to pay the total amount set forth in its 2009-2010 Fiscal Year Assessment.

2010-2011 FISCAL YEAR

27. On or about September 9, 2010, the Commission sent Respondent, through certified mail, an assessment invoice for the July 1, 2010 to June 30, 2011 Fiscal Year. Respondent's assessment was \$376.
28. Accompanying the assessment invoice was a notice that informed Respondent that it was obligated to pay the amount listed on the assessment invoice within thirty (30) days.
29. The Commission received no objections from Respondent to the 2010-2011 Fiscal Year Assessment.
30. Respondent failed to pay the total amount set forth in its 2010-2011 Fiscal Year Assessment.
31. The total outstanding assessment balance for Respondent is \$6,979.67.

Violations

COUNT 1

32. That Respondent, by failing to file an assessment report to demonstrate its gross intrastate operating revenues for the 2007 calendar year violated Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b).

The Bureau of Investigation and Enforcement's proposed civil penalty for this violation is \$1,000.

COUNT 2

33. That Respondent, by failing to pay the Commission's assessments for four (4) fiscal years, violated Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c).

Pursuant to Section 3301(a) and (b) of the Public Utility Code, 66 Pa.C.S. § 3301(a)-(b), the Bureau of Investigation and Enforcement submits that each day the assessment is late may be considered a separate violation and that, pursuant to Section 3301(a) and (b) of the Public Utility Code, 66 Pa.C.S. § 3301(a)-(b), a maximum civil penalty of \$1,000 per day for each day that the assessment is late could be levied against Respondent. Such a civil penalty, in this instance, would exceed the assessment amount that Respondent owes. Therefore, the Bureau of Investigation and Enforcement recommends that the Commission impose a civil penalty in the amount of \$1,045 or 15% of the outstanding amount due. The Bureau submits that this amount is both equitable and sufficiently large enough to deter future violations.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of Pennsylvania Public Utility Commission respectfully requests that:

(a) Respondent be ordered to pay a total of \$9,024.67, which consists of its outstanding assessment balance, which totals \$6,979.67, and a civil penalty of \$2,045 for the above-described violations.

(b) If payment of the civil penalty and assessments is not made, the Bureau of Investigation and Enforcement requests that:

- (1) the Commission issue an Order to cancel the Certificate of Public Convenience issued to Respondent; and
- (2) this matter be referred to the Pennsylvania Office of Attorney General for appropriate action.

Respectfully submitted,



Stephanie M. Wimer
Prosecutor
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission

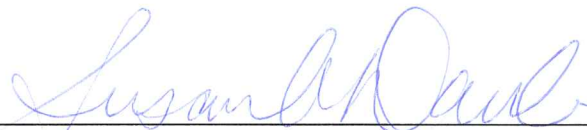
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: August 27, 2012

VERIFICATION

I, Susan A. Daub, Accountant, Bureau of Administrative Services, Assessment Section, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: August 27, 2012



Susan A. Daub, Accountant
Assessment Section
Bureau of Administrative Services
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Complaint 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:

Wayne Norris, President
Turtle Creek Industrial Railroad Company
2658 Jefferson Street
Box 518
Export, PA 15632-0518



Stephanie M. Wimer
Prosecutor
Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: August 27, 2012