**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held February 28, 2013 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer |  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v.  Walter H. McKeon, Inc. | C-2012-2312445 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion for Default Judgment (Motion), filed by the Commission’s Bureau of Investigation and Enforcement (I&E) on November 21, 2012, relative to the above-captioned proceeding. No Answers to the Motion have been filed. For the reasons stated below, we shall grant the Motion, sustain the Complaint, and grant the relief requested therein.

**Procedural History**

Walter H. McKeon, Inc. (Respondent) was issued a Certificate of Public Convenience (Certificate) on January 5, 2011, at Docket No. A‑2010-2204815, for trucking authority.

On July 3, 2012, I&E filed the above-captioned Complaint and served it by certified mail on the Respondent. Commission records indicate that the Respondent did not receive the Complaint and, on August 29, 2012, the Complaint was re-served by certified mail. In the Complaint, I&E alleged that the Commission sent Respondent an assessment invoice in the amount of $4,062 for the July 1, 2011 to June 30, 2012 Fiscal Year. Complaint at ¶ 12. I&E averred that, on September 26, 2011, the Respondent signed a certified mail card indicating that it received the assessment invoice. *Id.* Payment of the assessment was due on or before October 26, 2011, and the Respondent failed to pay the total amount set forth in its 2011-2012 Fiscal Year Assessment. *Id.* at   
¶¶ 14, 16.

I&E averred that the Respondent’s above-recounted failure to pay its assessments for the fiscal year constituted a violation of Section 510(c) of the Code, 66 Pa. C.S. § 510(c). As relief, I&E requested that a civil penalty of $605 be imposed. *Id.* at ¶ 17.[[1]](#footnote-1)

I&E requested that the Respondent be ordered to pay a total of $4,667, which consisted of Respondent’s outstanding assessment balance of $4,062, and a civil penalty of $605. If the Respondent did not pay the civil penalty and assessment amount, I&E requested that: (1) the Commission cancel the Respondent’s Certificate of Public Convenience (Certificate); (2) the Commission certify automobile registrations to the

Department of Transportation (PennDOT) for suspension or revocation; and (3) the Commission refer the matter to the Pennsylvania Office of Attorney General for appropriate action.

A Notice was attached to the Complaint and informed the Respondent that it must file an Answer within twenty days of the date of service of the Complaint. The Notice also informed the Respondent 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.

On August 31, 2012, the Respondent signed a receipt confirming that it received the Complaint. I&E attached a copy of proof of delivery of the Complaint to its Motion as Exhibit 1.

As stated above, I&E filed its Motion on November 21, 2012. No Answer to the Motion has been filed.

**Discussion**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

In its Motion, I&E states that the twenty-day time frame for filing an Answer to the Complaint expired on September 20, 2012, and the Respondent has not filed an Answer. Motion at ¶¶ 6, 7. I&E also states that the Respondent has not paid its outstanding assessment balance that totals $4,062, and the associated civil penalty of $605, which were requested in the Complaint. Motion at ¶ 8. Accordingly, I&E requests that the Commission enter a Default Order against the Respondent which takes the following actions: (1) cancels the Respondent’s Certificate; (2) orders the Respondent to pay its outstanding assessment and civil penalty; (3) notifies the Respondent that a copy of this Order will be sent to PennDOT for the suspension or revocation of vehicle registrations that were used under the Respondent’s operating authority; and (4) directs the Bureau of Administrative Services, Assessment Section, to refer the matter to the Pennsylvania Office of Attorney General for collection of the unpaid assessments. Motion at ¶ 9.

Based on our review of the record and the averments in I&E’s Motion, we shall grant the Motion. Pursuant to Section 5.61(c) of our Regulations, 52 Pa. Code

§ 5.61(c), a Respondent who fails to file an Answer within the twenty-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. The Commonwealth Court has upheld our authority to sustain complaints that are not answered within twenty days. *See*, *Fusaro v. Pa. PUC*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

In this case, the Respondent signed a receipt confirming that it received the Complaint by certified mail on August 31, 2012. The Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond and to request a hearing. The Respondent was also clearly advised that, if it did not file an Answer within twenty days, then I&E would request that we issue an Order imposing the penalties set forth in the Complaint. Under the circumstances in this case, we find that it is appropriate to sustain the Complaint and grant the relief requested therein.

**Conclusion**

Based on our review of the record, the averments in the Motion, and the applicable law, we shall grant I&E’s Motion for Default Judgment, sustain the Complaint, and grant the relief requested in the Complaint, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Default Judgment filed by the Commission’s Bureau of Investigation and Enforcement on November 21, 2012, is granted, consistent with this Opinion and Order.

2. That the allegations in the Bureau of Investigation and Enforcement’s Complaint are deemed admitted, and the Complaint is thereby sustained.

3. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of receipt of this Opinion and Order,

Walter H. McKeon, Inc., shall remit its outstanding assessment balance of $4,062, and the associated civil penalty of $605. Said check or money order shall be payable to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA, 17105-3265

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

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 Walter H. McKeon, Inc., fails to make the payment required by Ordering Paragraph No. 3 above within thirty days of the entry date of this Opinion and Order:

a. The Certificate of Public Convenience held by Walter H. McKeon, Inc., at Docket No. A‑2010-2204815, shall be cancelled without further action by this Commission;

b. The Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action; and

c. 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 Walter H. McKeon, Inc.’s vehicle registrations. Walter H. McKeon, Inc., 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.

7. That, after Walter H. McKeon, Inc. remits its outstanding assessment balance of $4,062 and the associated civil penalty of $605, for a total due of $4,667, as required by Ordering Paragraph No. 3, the Secretary’s Bureau shall mark this proceeding closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 28, 2013

ORDER ENTERED: February 28, 2013

1. The amount of $605 is 15% of the outstanding amount due. [↑](#footnote-ref-1)