



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

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REFER TO OUR FILE
C-2011-2230353

May 20, 2013

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

Re: Pennsylvania Public Utility Commission, Bureau of Transportation
and Safety v. Lou Lane, Inc. t/d/b/a All Star Limousines
Docket No. C-2011-2230353

Dear Secretary Chiavetta:

Enclosed for filing is an original copy of the Main Brief of Complainant
Pennsylvania Public Utility Commission, Bureau of Transportation and Safety in the
above-captioned matter. Copies have been served on the parties of record in accordance
with the Certificate of Service.

Sincerely,

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Enclosure

cc: As per certificate of service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
Bureau of Transportation and Safety :
v. : Docket No. C-2011-2230353
Lou Lane, Inc. t/d/b/a All Star :
Limousines :

**MAIN BRIEF OF
COMPLAINANT PENNSYLVANIA PUBLIC UTILITY COMMISSION,
BUREAU OF TRANSPORTATION AND SAFETY**

Stephanie M. Wimer
Prosecutor

Wayne T. Scott
First Deputy Chief Prosecutor

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: May 20, 2013

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STATEMENT OF THE CASE

Pursuant to its enforcement responsibilities, on July 22, 2011, the Pennsylvania Public Utility Commission's (Commission) Bureau of Transportation and Safety (BTS)¹ filed a formal complaint against Lou Lane, Inc. t/d/b/a All Star Limousines (Lou Lane) for failing to pay the Commission's annual assessments. Specifically, the complaint alleged that Lou Lane failed to pay the entire amount set forth in the Commission's assessments for two fiscal years: the July 1, 2009 to June 30, 2010 fiscal year (2009-2010 fiscal year) and the July 1, 2010 to June 30, 2011 fiscal year (2010-2011 fiscal year).

The complaint noted that the Commission denied Lou Lane's objection to the 2009-2010 fiscal year assessment and directed Lou Lane to pay the 2009-2010 assessment in three equal installments.² The first installment was due within 30 days following entry of the Commission's December 6, 2010 Order, the second installment was due within 4 months of the entry date and the third installment was due within 7 months of the entry date. The complaint alleged that Lou Lane only made one installment payment of \$4,885.33, which was received on March 16, 2011. The complaint further averred that Lou Lane owes a balance of \$9,770.67 for the 2009-2010 assessment.

¹ Effective August 11, 2011, the prosecutory functions of the Law Bureau and the Motor Carrier Enforcement Division of BTS were transferred to the Bureau of Investigation and Enforcement (I&E) pursuant to the Commission's reorganization. *See Implementation of Act 129 of 2008 Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). Since the hearing in this matter was held after the Commission's reorganization, Law Bureau Prosecutory Staff and BTS will be referenced as I&E throughout this brief.

² *See Lou Lane, Inc. t/d/b/a All Star Limousines Objection to the General Assessment for the Fiscal Year July 1, 2009 to June 30, 2010*, Docket No. M-2010-2156185, (Order entered December 6, 2010) (hereinafter referenced as the December 6, 2010 Order).

With respect to the 2010-2011 fiscal year, the complaint noted that Lou Lane received an assessment invoice in the amount of \$12,358.00, and claimed that Lou Lane did not object to this assessment. The complaint averred that Lou Lane failed to pay the 2010-2011 fiscal year assessment and sought payment of its total outstanding balance of \$22,128.67 for the 2009-2010 and 2010-2011 fiscal years.

By failing to pay the Commission's assessment, I&E alleged that Lou Lane violated Section 510(c) of the Public Utility Code, 66 Pa.C.S. §510(c). I&E demanded payment of the 2009-2010 and 2010-2011 fiscal year assessments and, if not paid within 20 days of service of the complaint, I&E requested that the Commission enter an order that: (1) revokes Lou Lane's certificate of public convenience; (2) notifies the Pennsylvania Department of Revenue that Lou Lane's certificate has been cancelled; (3) notifies Lou Lane's insurance carrier that its certificate has been revoked; and (4) imposes an additional fine on Lou Lane.

On August 2, 2011, Lou Lane filed an answer to the complaint. Lou Lane admitted receiving the 2009-2010 fiscal year assessment and admitted that the Commission's December 6, 2010 Order required it to make three equal installment payments to satisfy the 2009-2010 assessment. Lou Lane stated that it made a second payment of \$4,885.33 and promised to make a third. Lou Lane also admitted receiving the 2010-2011 fiscal year assessment and stated that it filed timely objections to this assessment, which had not been heard at the time the complaint was filed.

Administrative Law Judge Mary D. Long (ALJ Long) presided over the initial hearing in this matter, which took place on March 21, 2013. Both parties appeared.

I&E presented the testimony of Susan Daub, an accountant who worked in the Bureau of Administrative Services, Fiscal Office, Assessment Section during the time that the complaint was filed. Lou Lane presented the testimony of Louis Weiner, President of Lou Lane, Inc., and Alex Kindler who is a certified public accountant.

During the hearing, the parties stipulated that Lou Lane satisfied the second installment payment of \$4,885, as required by the December 6, 2010 Order. The parties also agreed that Lou Lane filed an objection to the 2010-2011 fiscal year assessment and that this objection was subsequently withdrawn by Lou Lane. The parties further stipulated that Lou Lane owes the third installment payment for the 2009-2010 fiscal year assessment and the entire amount that was assessed for the 2010-2011 fiscal year.

At the conclusion of the hearing, ALJ Long requested that the parties file briefs. Specifically, ALJ Long directed I&E to brief the following topics: (1) why it is in the public interest to revoke Lou Lane's certificate of public convenience, thereby risking the Commission's ability to receive outstanding assessment money from Lou Lane if it goes out of business; and (2) explain why an ALJ does not have authority to grant a payment arrangement. (N.T. 54-55).

Pursuant to ALJ Long's April 17, 2013 briefing order and directive at the initial hearing, I&E submits this main brief in support of the relief sought in the complaint.

SUMMARY OF ARGUMENT

Lou Lane has the burden of proving that it complied with the Commission's December 6, 2010 Order requiring payment of the 2009-2010 assessment. Lou Lane also has the burden of demonstrating the existence of extraordinary circumstances that prevented it from timely paying the Commission's assessments.

Only the Commission has the authority to grant installment payments for assessments. *A utility's alleged financial hardship does not constitute an extraordinary circumstance that would entitle it to an installment payment to satisfy delinquent assessments.* Rather, payment arrangements have solely been granted to classes of utilities for a current fiscal year assessment when there was a change in law or policy affecting those utilities' assessments.

Further, Lou Lane's history of failing to timely pay assessments is a reason to deny its request for a payment plan. Lou Lane's efforts to pay its past-due assessments began after I&E recently issued another complaint seeking revocation of its certificate.

Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c), requires utilities to pay assessments within 30 days of receiving the invoice. The Legislature intended that the entire amount of the assessment be paid on-time, in order for the Commission to receive funding to be able to execute its statutory duties. Additionally, the Legislature determined that revocation of a utility's certificate of public convenience, along with other remedies, was appropriate relief for failing to pay an assessment. Revocation of a utility's certificate for failure to pay an assessment is in accordance with at least 20 recent Commission decisions.

ARGUMENT

I. The Commission's Assessments are Binding on Lou Lane and Lou Lane Admits that It is Delinquent in Its Assessment Payments

In cases involving a violation of a determination or order of the Commission, the burden of proof is on the public utility to show that it complied with the determination or order. 66 Pa.C.S. § 315(b); *See also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Ultimate Medical Services, Inc.*, Docket No. C-2012-2310173 (Order recognizing finality of Initial Decision entered March 26, 2013). When a utility fails to pay its assessment in a timely manner, the burden is on the delinquent utility to demonstrate that there were extraordinary circumstances that prevented it from paying. *Pennsylvania Public Utility Commission v. Penn-Harris Taxi Service Co.*, 1998 Pa. PUC LEXIS 153, Docket No. A-00002450C9801 (Order entered September 28, 1998).

Rather than attempting to show that it complied with the December 6, 2010 Order denying its objection and requiring that the 2009-2010 assessment be paid in three equal installments, Lou Lane presented a series of unconvincing excuses as to why it neglected to make the payments. The Order, which was not appealed, clearly directed Lou Lane to pay the \$14,656 assessment in three equal installments, the third installment being no later than seven months after entry of the Order. Now, almost three years after the Order was entered, Lou Lane still has failed to satisfy the 2009-2010 assessment invoice and continues to owe \$4,885.33 for this fiscal year. (N.T. 29-30).

In addition, Lou Lane admits that it withdrew its objection to the 2011-2012 assessment and failed to pay it. (N.T. 6, 29). Thus, the 2011-2012 assessment in the amount of \$12,358 is binding on Lou Lane. Factors such as Lou Lane's financial ability to pay the assessment and viability as a business cannot be used to alter the amount that Lou Lane was assessed. Section 510(b) of the Public Utility Code sets forth a four-step assessment calculation centered on the Commission's administrative expenses and the gross intrastate operating revenues of public utilities during the calendar year preceding the Commission's fiscal year. 66 Pa.C.S. § 510(b). Whether a public utility allegedly had a negative cash flow for a particular year is not considered when calculating an assessment.

II. Lou Lane's Request to Pay Its Outstanding Assessments in Installments Should be Denied in Accordance with Established Legal Precedent

At the hearing, Lou Lane presented the testimony of its president and a certified public accountant. Lou Lane offered a 2012 financial statement prepared by its accountant in a bold attempt to buy even more time to pay the Commission's 2009-2010 and 2010-2011 fiscal year assessments. (Respondent's Exhibit 1). Specifically, Lou Lane requests that it be permitted to pay \$1,436.91 per month over a 12 month period. (N.T. 33).

I&E vigorously argues that Lou Lane should be required to immediately pay its outstanding assessments in one lump sum. Section 510(c) of the Public Utility Code states the following:

(c) Notice, hearing and payment. – The Commission shall give notice by registered or certified mail to each public utility of the amount lawfully charged against it under the provisions of this section, **which amount shall be paid by the public utility within 30 days of receipt** of such notice, unless the commission specifies on the notices sent to all public utilities an installment plan of payment, in which case **each public utility shall pay each installment on or before the date specified therefor by the commission.**

66 Pa.C.S. § 510(c) (emphasis added). Thus, assessment payments are due within thirty (30) days of receiving the invoice. Only the Commission, which is to be distinguished from staff and the ALJ, has the authority to grant payment of assessments in installments.³ Further, Section 510(c) provides that if the Commission offers installment payment plans, they must be offered to all public utilities. When the Commission permits payment of assessments in installments, public utilities **shall** pay the installment on-time.

Id.

A. The Commission Has Permitted Payment of Current Fiscal Year Assessments in Installments to Classes of Utilities Affected by Extraordinary Circumstances

Consistent with Section 510(c), the Commission has offered installment plans to classes of public utilities whose current assessments were affected by extraordinary circumstances, such as a change in law or policy. Notably, as seen in the present case, the Commission once offered installment payments to motor carriers that provide limousine services and are registered under the Unified Carrier Registration (UCR) Act, pursuant to 49 U.S.C.A. § 14504a.

³ The Commission's Procedures Manual also provides instruction on payment arrangements. "No requests to pay assessments in installments will be granted absent express order of the Commission." See *Pennsylvania Public Utility Commission Procedures Manual*, § 1305(c) (2012).

During the 2008-2009 fiscal year, the Commission did not issue assessments to motor carriers that were registered under UCR. (N.T. 31). After the 2008-2009 fiscal year, the Commission determined that it would issue assessments based on the intrastate revenues of UCR-registered motor carriers, provided that those motor carriers did not perform charter bus transportation services. Thus, beginning with the 2009-2010 fiscal year assessment, the Commission levied assessments on the intrastate revenues of UCR-registered motor carriers that performed service in vehicles with seating capacities of fifteen or less passengers, such as limousines.

Several limousine companies filed objections to the 2009-2010 assessment, arguing that the Commission was preempted by federal law from imposing an assessment on a motor carrier that is registered under the UCR Act. In denying these objections,⁴ the Commission permitted the limousine companies to pay the 2009-2010 assessment in three equal installments to lessen the financial impact of the assessment, given that the companies had not been assessed in at least one prior fiscal year. The first installment was due within 30 days following the entry of the Commission's order denying the

⁴ The Commonwealth Court of Pennsylvania affirmed the Commission's interpretation that the preemption provision in the UCR Act only applies to charter bus service, which is limited to group and party service in vehicles with seating capacities of 16 or more passengers, including the driver. *Regency Transp. Group, Ltd. v. Pa. PUC*, 44 A.3d 107, 112 (Pa. Cmwlth. 2012). Thus, it is well-settled that the Commission is permitted to assess the intrastate revenues of motor carriers using vehicles with seating capacities of 15 passengers or less.

objection. The second installment was due within four months of the entry date and the third installment was due within seven months of the entry date.⁵

Another example of the Commission permitting certain classes of utilities to pay their assessment in installments occurred during the 2007-2008 fiscal year. Beginning with the 2007-2008 fiscal year, the Commission divided the transportation assessment group into three separate groups: passenger, property and railroad. The effect of the trifurcation of the transportation group increased the proportion of the assessment payable by motor carriers of passengers by 291 percent and railroads by 293 percent.

See Generic Investigation Regarding Transportation Assessments, Docket

No. 1-2008-2022003 (Order entered June 11, 2008), p. 5. Given that this change in the characterization of utility groups resulted in a substantial increase to the assessments of motor carriers of passengers and railroads, the Commission permitted those utility classes to pay the 2007-2008 assessment in three equal installments over a seven-month period.

See Petition for Emergency Relief of the Pennsylvania Taxi and Paratransit Association,

Docket No. P-2008-2013624 (Ratification Order entered February 14, 2008).

⁵ The Commission granted installment payments of the 2009-2010 assessment, according to the above-described terms, in the following cases: (1) *G.G. & C. Bus Company, Inc. Objection to the General Assessment for the Fiscal Year July 1, 2009 to June 30, 2010*, Docket No. M-2010-2156206 (Order entered May 20, 2011); (2) *Regency Transportation Group, Ltd. Objection to the General Assessment for the Fiscal Year July 1, 2009 to June 30, 2010*, Docket No. M-2010-2156187 (Order entered January 14, 2011); (3) *Classy Cab, Inc. Objection to the General Assessment for the Fiscal Year July 1, 2009 to June 30, 2010*, Docket No. M-2010-2156212 (Order December 17, 2010); (4) *A. Limousine Service, Inc. Objection to the General Assessment for the Fiscal Year July 1, 2009 to June 30, 2010*, Docket No. M-2010-2156075 (Order entered November 23, 2010); and (5) *Lou Lane, Inc. t/d/b/a All Star Limousines Objection to the General Assessment for the Fiscal Year July 1, 2009 to June 30, 2010*, Docket No. M-2010-2156185 (Order entered December 6, 2010).

In each instance where the Commission authorized a payment arrangement, the arrangement applied to a current fiscal year assessment for a specific class of utilities. The above-cited payment arrangements were not granted for delinquent assessments from previous fiscal years.

B. The Commission Has Prohibited Payment of Past-Due Assessments in Installments to Individual Utilities Complaining of Financial Difficulties

I&E's research revealed no instance where the Commission permitted a single public utility to pay a past due assessment in installments due to circumstances affecting only that particular utility, such as alleged financial hardship. Conversely, such requests have been universally denied.

In *Penn-Harris Taxi*, the Commission denied Penn-Harris Taxi Service Co.'s (Penn Harris) request to pay its outstanding \$35,029.00 assessment in ten equal installments of \$3,500. *Penn-Harris Taxi Service Co.*, 1998 Pa. PUC LEXIS 153. Penn Harris requested a payment plan for precisely the same reasons as Lou Lane; it argued that due to an existing cash flow problem, it was unable to pay the assessment in a lump sum without impairing its operations. In denying Penn Harris' request, the Commission held that the installment plan language in Section 510 of the Public Utility Code, 66 Pa.C.S. § 510, does not apply to past-due assessments and only pertains to current assessments when extraordinary circumstances exist.

Similarly, in *Pa. PUC, Bureau of Transportation and Safety v. Venco Trucking, Inc.*, 1998 Pa. PUC LEXIS 204, Docket No. A-00083875C9801 (Initial Decision issued

October 19, 1998), ALJ Debra Paist denied Venco Trucking, Inc.'s (Venco) request to pay its past due assessments in monthly installments of \$1,000.⁶ Venco argued that approving an installment payment arrangement would serve the public interest by enabling Venco to better meet the needs of the public by having its resources dedicated towards acquiring equipment and enhancing services. ALJ Paist denied the payment arrangement and cited two primary reasons that were also used to deny the payment arrangement request in *Penn-Harris Taxi*: (1) the utility's poor payment history; and (2) the legislative intent behind requiring that the full amount of the assessment be paid on a timely basis.

Penn-Harris Taxi and *Venco Trucking* both examined the requesting utility's assessment payment history. In each instance, the utilities permitted delinquent assessments to accrue and failed to make any payments until after issuance of a complaint that threatened revocation of the utility's certificate.

In the present case, despite already having been granted an installment plan, Lou Lane failed to make the third installment of \$4,885.33 for the 2009-2010 fiscal year, which was due by July 6, 2011. (N.T. 29). Additionally, Lou Lane admits that it made no payments towards its assessment of \$12,358 for the 2010-2011 fiscal year. (N.T. 29, 30). This payment was due within 30 days of receiving the 2010-2011 assessment invoice dated September 10, 2010. *See* 66 Pa.C.S. § 10(c). Further, Ms. Daub credibly testified that the Commission did not receive any assessment payments from Lou Lane

⁶ The Commission adopted ALJ Paist's Initial Decision in an Opinion and Order entered on February 16, 1999.

during 2012. (N.T. 18). Just like *Penn-Harris Taxi* and *Venco Trucking*, Lou Lane has a non-compliant history regarding payment of its assessments.

Lou Lane began paying its outstanding assessment balances for the 2011-2012 and 2012-2013 fiscal years only after I&E filed a complaint against it requesting civil penalties, revocation of its certificate and referral to the Pennsylvania Department of Transportation (Penn DOT) for suspension of its vehicle registrations. See *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Lou Lane, Inc. t/d/b/a All Star Limousines*, Docket No. C-2013-2342382 (Complaint filed January 9, 2013). Lou Lane submitted a \$10,000 payment on or around January 25, 2013, and another \$10,000 payment on or around March 14, 2013 to be applied towards the outstanding assessments for the 2011-2012 and 2012-2013 fiscal years.

Thus, between August 4, 2011 and January 25, 2013, Lou Lane made no attempt to pay the Commission's assessments. Just as was the case in *Penn-Harris Taxi* and *Venco Trucking*, only when it became clear that Lou Lane's authority would be revoked and its vehicle registrations would be suspended by PennDOT, did Lou Lane attempt to make payments towards the assessment. In fact, Lou Lane has treated the Commission's assessment as an "optional" bill for many years. I&E strongly encourages the ALJ to recognize this simple fact as well as the fact that, now that its certificate is at risk Lou Lane can suddenly: afford to pay for its accountant to prepare a financial statement and to testify at a hearing; afford to pay legal fees associated with the litigation of its request to pay the assessment in installments; suddenly "find" \$20,000 between the end of January

2013 and mid-March 2013 to pay its outstanding assessments for the 2011-2012 and 2012-2013 fiscal years - all this in an effort to save its authority from being revoked. Thus, the credibility of Lou Lane's pleas for assistance in the form of a payment arrangement due to the alleged financial distress of its company are, at best, disingenuous.

Even if your Honor were to grant Lou Lane yet another repayment arrangement, there is no guarantee that Lou Lane would adhere to it since it already defied the Commission's December 6, 2010 Order. Further, by virtue of having a briefing schedule in this matter, Lou Lane was given the opportunity of having more time to secure money to pay the 2009-2010 and 2010-2011 assessments.

The second reason for denying the payment arrangements requested in *Penn-Harris Taxi* and *Venco Trucking* pertains to the legislative intent behind the deadline for paying assessments in Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c). Section 510(c) requires utilities to pay assessments within 30 days of receiving the invoice. The legislature intended that the full amount of the assessment be paid, on-time, in order for the Commission to be able to execute its statutory duties. In *Penn-Harris Taxi*, the Commission explained the importance of utilities submitting assessment payments in a timely manner.

The Commission is funded through assessments. Assessments are essentially payment for services rendered by the Commission, which allows regulated utilities, particularly monopolies, to do business in Pennsylvania. When payments are late, or when the Commission staff is forced to resort to legal action in order to recover past-due assessments, it can cause additional costs to accrue. These costs are eventually picked up, through the assessment process, by the utilities which do pay their bills on time.

Penn-Harris Taxi, 1998 Pa. PUC LEXIS 153, p. 5. Thus, the Commission has held that a failure to timely pay the full amount that was assessed impedes the Commission's ability to execute its duties and imposes economic burdens on prompt paying utilities.

Allowing Lou Lane to pay its outstanding assessments in installments would impermissibly elevate Lou Lane's business interests over the Commission's statutorily protected right to receive assessments on-time to fund the agency, so that it is able to serve the public interest in the execution of its duties. Additionally, granting Lou Lane a payment arrangement would establish a dangerous precedent that could permit any public utility, based on its own business reasons, to be given additional time to pay already delinquent assessments. This would unequivocally compromise the Commission's ability to receive funding to support the agency. Simply stated, what if all companies decided to do this? Therefore, Lou Lane's request to pay its past-due assessments in installments must be denied.

III. Consistent with the Law and Established Precedent, Revocation of a Utility's Certificate is an Appropriate Remedy for Failing to Pay Assessments

ALJ Long requested that I&E provide a discussion on why it is in the public interest to revoke Lou Lane's certificate of public convenience, thereby risking the Commission's ability to receive outstanding assessment money from Lou Lane "if he goes out of business and fires all of his employees." (N.T. 54-55).

The answer to this question is simple. Section 510(c) expressly provides that the Commission may revoke a utility's certificate of public convenience when that utility

fails to pay its assessment. 66 Pa.C.S. § 510(c). In enacting this remedy, the Legislature authorized the Commission to revoke a utility's certificate for a single instance of non-payment of an assessment, let alone a habitual failure to pay assessments. As stated in the previous section, what if all companies decided to do this?

When a utility fails to pay its assessment, the Commission still retains the duty to oversee that the utility is complying with Commission regulations. For example, with respect to motor carriers of passengers, the Commission must ensure that they maintain proper levels of liability insurance, pursuant to 52 Pa. Code § 32.11, assign enforcement officers to inspect their vehicles, pursuant to 52 Pa. Code § 29.406, confirm that their drivers satisfy certain standards including an acceptable driving history and criminal background check, pursuant to 52 Pa. Code §§ 29.501-509, and investigate complaints brought by the public regarding the adequacy or safety of service.

The Commission's regulatory oversight and enforcement duties must continue, regardless of whether a utility pays its assessment. These costs are absorbed by other paying utilities within the same assessment group, *i.e.* motor carriers of passengers. Revocation of a non-paying utility's certificate of public convenience would allow the Commission to cease regulating that utility and accruing costs that it must collect from other paying utilities.

After a utility's certificate is revoked, the Commission can refer the case to the Pennsylvania Office of Attorney General for collection of the unpaid assessment as well as any additional cost incurred by the Commission for a utility's failure to pay.

66 Pa.C.S. § 510(c).

In this case, revocation of a certificate of public convenience is especially appropriate. Lou Lane disobeyed a Commission-ordered payment arrangement and has thereafter consistently disregarded assessment invoices. Based on its poor compliance history, the Commission has no assurance that it will timely receive payment of Lou Lane's assessments even if a payment arrangement is granted.

In fact, the Commission recently revoked the certificates of public convenience for several utilities that failed to pay their assessments. All of these utilities had outstanding balances that were less, oftentimes substantially less, than what Lou Lane currently owes. The following is a list of recent cases where utilities' certificates were revoked for non-payment of Commission assessments:

- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. K.G. Trucking, LLC*, Docket No. C-2012-2327785 (Order entered February 14, 2013); utility owed \$52.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Potoka Trucking, Inc.*, Docket No. C-2012-2327789 (Order entered February 28, 2013); utility owed \$65.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Jodie L. Binner t/a JRSB Hauling*, Docket No. C-2012-2318302 (Order entered December 20, 2012); utility owed \$107.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Anthony Rodilosso*, Docket No. C-2012-2318060 (Order entered March 14, 2013); utility owed \$179.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Wills Trucking, Inc.*, Docket No. C-2012-2318070 (Order entered December 20, 2012); utility owed \$187.

- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Eugene R. Mowery*, Docket No. C-2012-2318088 (Order entered December 20, 2012); utility owed \$189.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. John R. Pierce*, Docket No. C-2012-2318094 (Order entered March 26, 2013); utility owed \$222.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Andres Rolando Hernandez Diaz*, Docket No. C-2012-2317467 (Order entered December 20, 2012); utility owed \$274.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Floyd C. Matthews t/a F.C. Matthews Trucking*, Docket No. C-2012-2316193 (Order entered November 8, 2012); utility owed \$635.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Ralph J. Knott*, Docket No. C-2012-2316006 (Order entered December 5, 2012); utility owed \$791.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Hathaway Specialized Hauling, Inc. t/a Fantasia Machinery Transport*, Docket No. C-2012-2325066 (Order entered March 14, 2013); utility owed \$998.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. North East Transfer, Inc.*, Docket No. C-2012-2315998 (Order entered December 20, 2012); utility owed \$1,130.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Beverly A. Hall and Rich Lengel t/a Lemirage Limousine*, Docket No. C-2012-2315795 (Order entered January 24, 2013); utility owed \$1,461.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Eastern Connection Operating, Inc.*, Docket No. C-2012-2313522 (Order entered February 28, 2012); utility owed \$2,300.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Walter H. McKeon, Inc.*, Docket No. C-2012-2312445 (Order entered February 28, 2012); utility owed \$4,062.

- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Trimac Transportation East, Inc.*, Docket No. C-2012-2311750 (Order entered December 20, 2012); utility owed \$4,772.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Lower Bucks Transportation Service, Inc.*, Docket No. C-2012-2310181 (Order entered December 20, 2012); utility owed \$7,094.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Ultimate Medical Services, Inc.*, Docket No. C-2012-2310173 (Order entered March 26, 2013); utility owed \$9,677.
- *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Majesty Company, Inc.*, Docket No. C-2012-2310196 (Order entered December 5, 2012); utility owed \$13,597.

Clearly, there is well-established precedent for revoking a utility's certificate for failing to pay Commission assessments and there is no logical reason to find differently in this case.

Finally, to address your Honor's concern regarding the welfare of Lou Lane's employees, laying off or firing employees is a regrettable consequence of Lou Lane's blatant disregard of Commission assessments. Fortunately, it seems that the company "finds" the money when it is pushed to do so. Therefore, it remains to be seen whether its employees will be terminated. But, in any event, this is not the Commission's issue because any company may attempt to threaten the Commission with closure. All that really matters is that the legislature provided this remedy to the Commission and it is in the public interest for companies to pay their assessments.

IV. Conclusion

In conclusion, I&E submits that Lou Lane has not satisfied its burden of proving that it is entitled to receive yet another installment plan to pay its past due assessments.

I&E requests that its complaint be sustained and that Lou Lane be directed to immediately pay its outstanding assessments. If not immediately paid, then I&E requests that Lou Lane's certificate of public convenience be revoked.

PROPOSED FINDINGS OF FACT

1. On or around September 9, 2009, the Commission issued Lou Lane an assessment invoice for the 2009-2010 fiscal year in the amount of \$14,656.00. (I&E Exhibit 1).
2. On October 22, 2009, Lou Lane filed an objection to the 2009-2010 assessment. (December 6, 2010 Order at 2).
3. The Commission denied Lou Lane's objection. (December 6, 2010 Order at 15).
4. In denying Lou Lane's objection, the Commission gave Lou Lane the option to pay its 2009-2010 assessment in three equal installments. (December 6, 2010 Order at 16).
5. The first installment was due within 30 days following entry of the December 6, 2010 Order, or by January 5, 2011. (December 6, 2010 Order at 16).
6. The second installment was due within four months following entry of the December 6, 2010 order, or by April 6, 2011. (December 6, 2010 Order at 16).
7. The third installment was due within seven months following entry of the December 6, 2010 order, or by July 6, 2011. (December 6, 2010 Order at 16).
8. Lou Lane made the first installment payment of \$4,885.33 on or around March 16, 2011, which was after the deadline to make the first payment. (N.T. 15).
9. Lou Lane made the second installment payment of \$4,885.33 on or around August 4, 2011, which was after the deadline to make the second payment. (N.T. 15).
10. Lou Lane did not submit any payment for the third installment. (N.T. 15).
11. On or around September 10, 2010, the Commission issued Lou Lane an assessment invoice for the 2010-2011 fiscal year in the amount of \$12,358. (I&E Exhibit 2).
12. Lou Lane filed an objection to the 2010-2011 assessment. (N.T. 16).
13. Lou Lane subsequently withdrew its objection to the 2010-2011 assessment. (N.T. 16).

14. Lou Lane did not pay any amount towards the 2010-2011 assessment and currently owes \$12,358 for this fiscal year. (N.T. 17).
15. Between January 1, 2012 and December 31, 2012, Lou Lane did not submit any assessment payments to the Commission. (N.T. 18).
16. In 2013, Lou Lane made two \$10,000 payments towards assessments that were invoiced after the 2009-2010 and 2010-2011 fiscal years. (N.T. 32). *See also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Lou Lane, Inc. t/d/b/a All Star Limousines*, Docket No. C-2013-2342382.
17. Commission assessments must be paid within thirty (30) days of receipt of the invoice. (N.T. 17); *See also* 66 Pa.C.S. § 510(c).
18. Lou Lane admits that it did not pay the third installment payment for the 2009-2010 fiscal year assessment and the entire assessment for the 2010-2011 fiscal year. (N.T. 29-30).
19. Lou Lane requests an installment payment plan to permit it to have even more time to pay its delinquent assessments for the 2009-2010 and 2010-2011 fiscal years. (N.T. 33).
20. Lou Lane's request to further delay paying the Commission's assessment is based on its own cash flow problems. (N.T. 43-49).

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa.C.S. § 501.
3. The burden of proof in this proceeding is on Lou Lane. 66 Pa.C.S. § 315(b) and *Pennsylvania Public Utility Commission v. Penn-Harris Taxi Service Co.*, 1998 Pa. PUC LEXIS 153, Docket No. A-00002450C9801 (Order entered September 28, 1998).
4. As the holder of a Commission-issued certificate of public convenience, Lou Lane has a duty to comply with Commission orders and regulations. 66 Pa.C.S. § 501(c).
5. Assessment payments are due within thirty days of receipt of the assessment invoice. 66 Pa.C.S. § 510(c).
6. Alleged financial hardship of a utility does not constitute an extraordinary circumstance to be granted a payment plan to satisfy past-due assessments. *Pennsylvania Public Utility Commission v. Penn-Harris Taxi Service Co.*, 1998 Pa. PUC LEXIS 153, Docket No. A-00002450C9801 (Order entered September 28, 1998).
7. The Commission may revoke Lou Lane's certificate of public convenience for failing to pay its assessments. 66 Pa.C.S. § 510(c).
8. Lou Lane failed to satisfy its burden of proof in this proceeding.

CERTIFICATE OF SERVICE

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

Service by First Class Mail and Electronic Mail:

The Honorable Mary D. Long
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222
malong@pa.gov

John A. Pillar, Esq.
265 Merion Drive
Pittsburgh, PA 15228
pillarlaw@verizon.net



Stephanie M. Wimer
Prosecutor
PA Attorney ID # 207522

Counsel for Pennsylvania Public
Utility Commission, Bureau of
Transportation and Safety

P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: 717-787-5000

Dated: May 20, 2013

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