



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

IN REPLY PLEASE
REFER TO OUR FILE
C-2011-2230353

June 3, 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 Reply 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: Honorable Mary D. Long
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 :

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

Stephanie M. Wimer
Prosecutor

Wayne T. Scott
First Deputy Chief Prosecutor

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Dated: June 3, 2013

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I. INTRODUCTION

This case originated on July 22, 2011, when 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 (Respondent) for failing to pay the Commission's assessments for the July 1, 2009 to June 30, 2010, and July 1, 2010 to June 30, 2011 fiscal years. Since the issuance of the Complaint, Respondent has made some payments towards its outstanding assessments and currently owes \$4,885.34 for the 2009-2010 fiscal year and \$12,358.00 for the 2010-2011 fiscal year. Respondent does not dispute that it owes the Commission this money; however, Respondent requests to pay the outstanding balance in 12 monthly installments of \$1,436.91.

On May 20, 2013, pursuant to Administrative Law Judge (ALJ) Mary D. Long's Briefing Order of April 17, 2013, I&E and Respondent filed main briefs in the above-captioned matter. In its Main Brief, I&E argued that Respondent is not lawfully entitled to pay its delinquent assessments in installments. Respondent claimed that the Commission should grant it additional time to pay its outstanding assessments due to its own financial difficulties, which became exacerbated by the recent increase in Commission issued assessments during the past few years. By this Reply Brief, I&E responds to certain contentions advanced by Respondent in its Main Brief.

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 Reply Brief.

II. ARGUMENT: Respondent Has Not Presented Extraordinary Circumstances That Would Qualify It For A Payment Arrangement To Pay Its Outstanding Assessments

It is not disputed that the Commission can consider extraordinary circumstances in determining whether to allow a utility the option of paying its assessment in installments. *See Pennsylvania Public Utility Commission v. Penn-Harris Taxi Service Co.*, 1998 Pa. PUC LEXIS 153, Docket No. A-00002450C9801 (Order entered September 28, 1998). However, financial hardship of a particular utility does not constitute an extraordinary circumstance. The Commission has previously denied requests to pay outstanding assessments in installments based on such financial difficulties. *Id.*; *See also 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).

In its Main Brief, the sole reason that Respondent requests a payment arrangement is due to cash flow problems. Respondent explains the financial condition of its business, including loans and taxes that it is obligated to pay and the higher operational costs of its business, such as the price of gas. (Respondent Main Brief at p. 4-5). Respondent also discusses the efforts that it has made to increase revenues while lowering costs. (Respondent Main Brief at p. 5-6). Respondent complains that requiring it to pay the total amount due of \$17,243.34 within 30 days would affect the level of service necessary to satisfy its customers and may jeopardize its business. (Respondent Main Brief at p. 6 and 9). Thus, Respondent requests to pay its outstanding balance over time.

However, Respondent's cash flow problem does not constitute the requisite extraordinary circumstance whereby it would be permitted to pay its delinquent

assessment in installments, pursuant to the Commission Orders cited above that are also discussed in I&E's Main Brief. Further, for the reasons set forth in I&E's Main Brief, Respondent is precluded from being granted an assessment payment arrangement due to its poor payment history and the legislative intent behind Section 510 of the Public Utility Code, which directs utilities to pay their assessments within 30 days. 66 Pa. C.S. §510(c).

In addition, Respondent contends that its Commission assessments have increased since prior to 2008 and such an increase presents another financial hurdle for its business. (Respondent's Main Brief at 4, 9). I&E does not disagree that Respondent's assessments may have increased since prior to 2008 because changes in law and policy affecting assessments occurred during this time. In fact, for the 2009-2010 fiscal year assessment, Respondent, as well as numerous other similarly situated passenger motor carriers, were granted the option to pay their assessments in installments to lessen the financial impact of a change in federal law. *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). However, beginning with the 2010-2011 fiscal year, Respondent knew that it was obligated to pay a greater assessment and should have set aside monies to do so.

Lastly, Respondent also has an outstanding assessment balance for the July 1, 2011 to June 30, 2012, and July 1, 2012 to June 30, 2013 fiscal years. I&E initiated an action seeking to collect assessments that are owed to the Commission for these years. *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). In its Main Brief in the instant proceeding, Respondent claims that it reached an agreement with the Commission to pay these assessments in installments. (Respondent Main Brief at 5, FF #18). This is simply not true and is not supported by the transcript. Rather, Respondent unilaterally decided to pay its outstanding balance in \$10,000 installments during the pendency of the 2011-2012 and 2012-2013 case, with the hope of satisfying the entire balance prior to a hearing.

III. CONCLUSION

WHEREFORE, I&E respectfully requests that its Complaint be sustained and that Respondent be directed to immediately pay its outstanding assessments. If not immediately paid, then I&E requests that the Commission revoke Respondent's Certificate of Public Convenience.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Reply 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:

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