



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

September 11, 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 of the Reply of the Bureau of Transportation and Safety to the Exception of Lou Lane, Inc. t/d/b/a All Star Limousines in the above referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Stephanie M. Wimer  
Prosecutor

Enclosure

cc: Honorable Mary D. Long  
As per certificate of service

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission, :  
Bureau of Transportation & Safety :  
:  
v. :  
:  
Lou Lane, Inc. t/d/b/a All Star :  
Limousines :

Docket No. C-2011-2230353

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**REPLY EXCEPTION  
OF THE  
BUREAU OF TRANSPORTATION AND SAFETY**

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Pursuant to 52 Pa. Code § 5.535, the Pennsylvania Public Utility Commission's (Commission) Bureau of Transportation and Safety (BTS)<sup>1</sup> files this Reply to the Exception of Lou Lane, Inc. t/d/b/a All Star Limousines (Lou Lane) in the above-captioned proceeding.

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On July 21, 2011, BTS filed a formal complaint against Lou Lane for failing to pay the Commission's assessments for two fiscal years: the July 1, 2009 to June 30, 2010, and July 1, 2010 to June 30, 2011 fiscal years. The complaint alleged that Lou Lane had an outstanding balance of \$22,128.67 and sought payment of the overdue assessment.

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<sup>1</sup> 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 this proceeding was initiated prior to the Commission's reorganization, the prosecuting bureau will be referred to as BTS.

On August 4, 2011, Lou Lane filed an answer denying several of the allegations in the complaint.

An Initial Hearing was held in this matter on March 21, 2013 before Administrative Law Judge (ALJ) Mary D. Long. 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, and Alex Kindler, a certified public accountant.

During the hearing, the parties stipulated that Lou Lane satisfied the second installment payment for the 2009-2010 fiscal year that is referenced in the complaint. The parties also agreed that Lou Lane did in fact file an objection to the 2010-2011 fiscal year assessment, contrary to what was stated in the complaint, and subsequently withdrew the objection. The parties further stipulated that Lou Lane owes the third installment payment for the 2009-2010 fiscal year and the entire amount that was assessed for the 2010-2011 fiscal year. While Lou Lane does not contest its liability to pay the outstanding amount, it requested the ability to pay the balance in twelve equal monthly installments.<sup>2</sup>

At the conclusion of the hearing, ALJ Long directed the parties to file briefs addressing Lou Lane's request for a payment arrangement and whether it is appropriate to cancel Lou Lane's certificate of public convenience as a sanction for failing to pay

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<sup>2</sup> Lou Lane states that a civil penalty was demanded in the complaint and requests the ability to pay the penalty, along with the past due assessments, in installments. (Exception at 2). However, BTS did not seek a civil penalty in this matter.

assessments. The parties filed main briefs on May 20, 2013, and BTS filed a reply brief on June 3, 2013.

ALJ Long's Initial Decision was issued on August 21, 2013. It sustained BTS' complaint and denied Lou Lane's request for a second installment plan for the payment of its delinquent assessments. The Initial Decision further directed Lou Lane to pay its outstanding assessment of \$17,243.33 within 10 days of a final Commission order. If such payment is not received, the ALJ ordered that Lou Lane's certificate of public convenience be cancelled, that the Commission notify the Pennsylvania Department of Transportation to place an administrative hold on Lou Lane's vehicle registrations and that the matter be referred to the Pennsylvania Office of Attorney General for appropriate action.

Lou Lane filed Exceptions to the ALJ's Initial Decision on September 6, 2013.

## II. REPLY EXCPETION

THE ALJ CORRECTLY DETERMINED THAT NO EXTRAORDINARY CIRCUMSTANCES ARE PRESENT THAT WOULD PERMIT LOU LANE TO PAY ITS DELINQUENT ASSESSMENT IN INSTALLMENTS<sup>3</sup>

Pursuant to Section 510(c) of the Public Utility Code (Code),<sup>4</sup> utilities must pay Commission assessments within 30 days of receiving the invoice, unless the Commission specifies on notices sent to all public utilities that an installment plan of payment is

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<sup>3</sup> BTS incorporates its main brief and reply brief by reference in this Reply Exception.

<sup>4</sup> 66 Pa. C.S. § 510(c).

acceptable. The Commission only permits installment payments of assessments upon the existence of extraordinary circumstances.<sup>5</sup>

In practice, the Commission has allowed classes of utilities to pay assessments in installments on two occasions: (1) when the Commission divided the transportation assessment group into three separate groups for assessment purposes, since the change in the characterization of utility groups resulted in an unforeseen substantial increase to the assessments of passenger motor carriers and railroads;<sup>6</sup> and (2) after the enactment of the Unified Carrier Registration (UCR) Act,<sup>7</sup> the Commission offered installment payments to motor carriers providing limousine services who erroneously believed that they were exempt from the Commission's assessment under the concept of federal preemption.<sup>8</sup> The above examples demonstrate that absent a change in law or policy affecting the assessment allocation for numerous utilities - which is an occurrence that represents an extraordinary circumstance - the Commission has not allowed installment plans of payment.

In its Exception, Lou Lane asserts that the ALJ erred in concluding that its financial difficulties do not constitute an extraordinary circumstance that would justify paying the outstanding assessment in installments over a 12-month period of time. However, in making this assertion, Lou Lane simply ignores Commission precedent. The

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<sup>5</sup> See *Pa. PUC v. Penn-Harris Taxi Service Co.*, Docket No. A-00002450C9801 (Order entered September 28, 1998); *Pa. PUC, Bureau of Transportation and Safety v. Venco Trucking, Inc.*, Docket No. A-00083875C9801 (Order recognizing finality of Initial Decision entered on February 16, 1999).

<sup>6</sup> See *Petition for Emergency Relief of the Pennsylvania Taxi and Paratransit Association*, Docket No. P-2008-2013624 (Ratification Order entered February 14, 2008).

<sup>7</sup> 49 U.S.C.A. § 14504a.

Commission has never found that a company's particular economic difficulties authorize it to pay long overdue assessments in installments.

In fact, the opposite is true. The ALJ cited to the *Penn-Harris Taxi* case, in which the Commission denied the taxi company's request for an installment plan due to an existing cash flow problem. (I.D. at 4). Penn-Harris Taxi Service Co. (Penn Harris) argued that it could not pay the assessment in a lump sum without impairing its operations. The Commission concluded that this did not constitute an extraordinary circumstance.

In rendering its conclusion, the Commission also considered Penn Harris' assessment payment history. Penn Harris allowed delinquent assessments to accrue and failed to make any payments until after issuance of a complaint that threatened revocation of its certificate.

Like Penn Harris, Lou Lane has a non-compliant assessment payment history. The ALJ noted that Lou Lane failed to make its third installment payment of \$4,885.33 for the 2009-2010 fiscal year by July 6, 2011, as ordered by the Commission. (I.D. at 5). Further, Lou Lane admits that it made no payment towards its assessment of \$12,358 for the 2010-2011 fiscal year. (I.D. at 3, 5). The ALJ correctly determined that Lou Lane's poor payment history demonstrates a lack of good faith or respect for the Commission's authority. (I.D. at 6).

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<sup>8</sup> 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).

The ALJ also discusses the Commission's reasoning behind prohibiting payment plans for overdue assessments, barring extraordinary circumstances. The ALJ correctly acknowledges that a utility's failure to pay an assessment "imposes a burden not only on those utilities who promptly pay their assessments, but upon the Commission and the orderly execution of its duties and responsibilities[.]" (I.D. at 4-5).

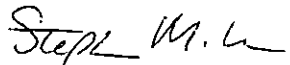
If Lou Lane is permitted to pay its long overdue assessments in installments, despite its poor payment history and lack of extraordinary circumstances, this would send a message that all utilities are entitled to this lenience.

Therefore, based on Commission precedent, the ALJ did not err in determining that extraordinary circumstances do not exist that would allow Lou Lane to pay its delinquent assessments in installments.

### III. CONCLUSION

The ALJ was correct in her determination that Lou Lane is not entitled to an installment payment plan to pay its outstanding assessments. For the reasons set forth above, BTS respectfully requests that the Commission deny Lou Lane's Exception and adopt the ALJ's Initial Decision.

Respectfully Submitted,



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Stephanie M. Wimer  
Prosecutor  
PA Attorney ID # 207522

Bureau of Transportation and Safety,  
Pennsylvania Public Utility Commission

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Fax: 717-783-3458

Dated: September 11, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document, Reply of the Bureau of Transportation and Safety to the Exceptions of Lou Lane, Inc. t/d/b/a All Star Limousines, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

*Service by Electronic Mail and First Class Mail:*

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Prosecutor  
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