



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

ISSUED: AUGUST 19, 2002

IN REPLY PLEASE
REFER TO OUR FILE

A-00107168C0107

LOUIS W EMMI ESQUIRE
201 LEBANON SHOPS
300 MT LEBANON BLVD
PITTSBURGH PA 15234

Pennsylvania Public Utility Commission,
Bureau of Transportation and Safety
v.
Donald Fix, t/a Don Farr Moving Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge James D. Porterfield. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
James J. McNulty
Secretary

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FOLDER

Encls.
Certified Mail
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R K SMITH JR ESQUIRE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION & SAFETY
PO BOX 3265 KEYSTONE BUILDING
HARRISBURG PA 17105-3265

DONALD FIX
T/A DON FARR MOVING COMPANY
4920 BUTTERMILK HOLLOW ROAD
WEST MIFFLIN PA 15122

A-00107168C007 Pennsylvania Public Utility Commission,
Bureau of Transportation & Safety

v.

Donald Fix t/a Don Farr Moving Company

R K SMITH JR ESQUIRE
PA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION & SAFETY
PO BOX 3265
HARRISBURG PA 17105-3265

DONALD FIX
T/A DON FARR MOVING COMPANY
4920 BUTTERMILK HOLLOW ROAD
WEST MIFFLIN PA 15122

LOUIS W EMMI ESQUIRE
201 LEBANON SHOPS
300 MT LEBANON BOULEVARD
PITTSBURGH PA 15234

ID 20/10

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	Docket No.:
Bureau of Transportation and Safety,	:	A-00107168C0107
	:	
v.	:	
	:	
Donald Fix, t/a Don Farr Moving Company.	:	

INITIAL DECISION

Before
James D. Porterfield
Administrative Law Judge

HISTORY OF THE PROCEEDING

This decision resolves the Complaint brought by the Pennsylvania Public Utility Commission's Bureau of Transportation and Safety¹ (BT&S or Complainant) alleging a medley of violations of the Public Utility Code and the Commission's regulations by Donald Fix Jr. (Fix or Respondent). The Complaint alleges (1) charging rates different from tariff rates (thereby violating 66 Pa.C.S. §1303); (2) failing to file quarterly reports with the Commission showing instances when charges exceeded an estimate by more than ten percent (thereby violating 52 Pa. Code §31.124); (3) service

¹ Under Title 66 of the Pennsylvania Consolidated Statutes, the Pennsylvania Public Utility Commission has statutory power to regulate defined public utilities, which include certain motor carriers. The Commission has delegated its power to initiate proceedings that are of a prosecutory nature to various bureaus within the Commission. The Commission has delegated its prosecutory authority in this type of proceeding to its Bureau of Transportation and Safety.

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outside the authorized territory (thereby violating 66 Pa.C.S. §1102(a)(1)(i)); (4) failing to have the heading on the Estimated Cost of Services form in letters one-half inch in height (thereby violating 52 Pa. Code §31.122(2)); (5) failing to provide shippers with an Estimated Cost of Services form (thereby violating 52 Pa. Code §31.122(2)); and (6) failing to furnish shippers with an Information for Shippers form before preparing an order of service (thereby violating 52 Pa. Code §31.121(a)). The total monetary penalty sought, before the withdrawal of certain allegations, is \$8050.

At hearing Fix did not contest the violations alleged with respect to item Nos. 1 and 2, above, and no evidence of mitigating circumstances was offered. Hence, a monetary penalty of \$2450 is imposed with respect to the violations comprehended by those two items. With respect to item No. 3, above, Fix admitted to four of the five alleged violations. It is found that Fix also committed the fifth violation. Therefore, a penalty of \$1250 is imposed, \$250 for each violation. With respect to item No. 4, above, Fix failed to show that his form heading is in compliance with the Commission's regulation. A penalty of \$600 is ordered, i.e., \$100 for each violation. With respect to Item No. 5, above, Fix adequately explained away three of the alleged eight violations; the explanation supports waiving a portion of the penalty sought. A total penalty of \$1250, i.e., \$250 for each violation, is ordered. With respect to item No. 6, above, Fix failed to satisfy his burden of proof, and a total penalty of \$1300 is imposed, i.e., \$100 for each violation, after one alleged violation was withdrawn. The total penalty ordered is \$6850.

On Nov. 9, 2001, the Bureau of Transportation and Safety filed the Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Donald Fix, t/a Don Farr Moving Company, under the delegation of authority referred to above and under 66 Pa.C.S. §701. The Complaint is docketed at A-00107168C0107. On Nov. 20, the Respondent answered the Complaint. The Complaint was referred by the Secretary's Bureau to the Office of Administrative Law

Judge for the scheduling and convening of a prehearing conference and evidentiary hearing. Interim Order One issued Dec. 19.

After notice to the parties, dated Dec. 14, 2001, the Complaint was scheduled for a prehearing conference to be continued into an evidentiary hearing on March 14, 2002, at 10 a.m., in an 11th floor hearing room, Pittsburgh State Office Building, Pittsburgh, Pa., with ALJ James D. Porterfield assigned as the presiding officer to hear the Complaint.

For the scheduled hearing, R.K. Smith Jr., Esquire, appeared as Assistant Counsel from the Legal Division of the Commission's Bureau of Transportation and Safety and, in support of the Complaint, offered the testimony of Cynthia Ann Hawthorne, Supervisor and Enforcement Officer, PUC, and the testimony of Monroe H. Dove, Tariff Examiner, PUC. The following exhibits were admitted into the record in behalf of BT&S:

BT&S Exh. No. 1, Bill of Lading for the Walker move.

BT&S Exh. No. 2, Respondent's "Information For Shippers" form.

BT&S Exh. No. 3, Bill of Lading for the Cameron move.

BT&S Exh. No. 4, Respondent's Operating Authority and Tariff.

BT&S Exh. No. 5, Respondent's "Estimated Cost of Services [and] Order of Service" form.

Louis W. Emmi, Esquire, appeared on behalf of Donald Fix and offered the testimony of Donald Fix, Jr.

The record of the proceeding includes Interim Order One—Pertaining to Both Prehearing and Hearing Matters, issued Dec. 19, 2001; the exhibits identified and described above; and the transcript (51 pages in length) of the notes of the hearing (NT).

Briefs were not filed. The record initially closed on April 15, 2002, but was reopened and closed on July 12, 2002, for the purpose of admitting into the record, as necessary, the Complaint and Answer, identified respectively as ALJ Exh. No. 1 and ALJ Exh. No. 2.

FINDINGS OF FACT

1. Donald Fix, t/a Don Farr Moving Company, the Respondent, transports household goods in use and maintains his principal place of business at 4920 Buttermilk Hollow Road, West Mifflin, Pa. (ALJ Exh. No. 1.)
2. The BT&S periodically reviews the records of all household (goods in use) movers for compliance with the Commission's regulations. (NT, at 7-8.)
3. On July 18 and 19, 2001, Cynthia A. Hawthorne and Paul Caliarì, BT&S Enforcement Officers, conducted a household mover review of Donald Fix, t/a Don Farr Moving Company. (ALJ Exh. No. 1; NT, at 7-8.)
4. The Respondent was issued a Certificate of Public Convenience following the Commission's Order, entered March 3, 1987, at Docket No. A-00107168. (BT&S Exh. No. 4.)
5. Section 1303 of the Public Utility Code, as amended (66 Pa.C.S. §§101-3316), requires a public utility, like the Respondent, to adhere to the rates contained in tariffs. (Notice: 66 Pa.C.S. §332(e) and §331(g); 52 Pa. Code §5.408.)
6. Fix admits, as alleged in Par. Nos. 6(a), 7(b), 10(a), 11(b), 15(a), 16(a), and 17(a) of the Complaint, that he charged rates different from tariff rates, thereby violating 66 Pa.C.S. §1303. (NT, at 28-29.)
7. Section 31.124 of Title 52 of the Pennsylvania Code requires a motor common carrier of household goods in use to file with the Commission a quarterly

report showing instances when charges exceeded an estimate by more than ten percent. (52 Pa. Code §31.124; notice: 66 Pa.C.S. §332(e) and §331(g); 52 Pa. Code §5.408.)

8. Fix admits, as alleged in Par. Nos. 13(d) and 18(d) of the Complaint, that he failed to file quarterly reports showing instances when charges exceeded an estimate by more than ten percent. (52 Pa. Code §31.124; ALJ Ex. No. 1; NT, at 29.)

9. Subsection §1102(a)(1)(i) of the Public Utility Code, as amended (66 Pa.C.S. §§101–3316), prohibits a public utility, like the Respondent, from furnishing, within the Commonwealth, service to a territory different from that authorized by a certificate of public convenience. (Notice: 66 Pa.C.S. §332(e) and §331(g); 52 Pa. Code §5.408.)

10. Fix admits that he performed the transportation services described in Par. Nos. 4(a), 9(a), 13(a), and 18(a) of the Complaint, and he stipulates that these services were performed to or from a territory different from that authorized by his certificate of public convenience. (ALJ Ex. No. 1; NT, at 5–6.)

11. The Respondent is authorized “[t]o transport, as a Class D carrier, household goods in use from points in the borough [*sic*] of Braddock, Allegheny County, and within five (5) miles by usually traveled highways of the limits of the said borough, to points within thirty (30) miles by usually traveled highways of the limits of the said borough, and vice versa.” (BT&S Ex. No. 4.)

12. On Oct. 23, 2000, Respondent transported household goods for Evie Cameron from New Brighton, Beaver County, Pennsylvania, to North Versailles, Allegheny County, Pennsylvania, for \$720 compensation. (ALJ Ex. No. 1; NT, at 23–25, 48–49.)

13. North Versailles, Allegheny County, Pennsylvania, is more than five miles by usually traveled highways from the limits of the Borough of Braddock;

North Versailles was the destination for the Evie Cameron move. (ALJ Exh. No. 1, Par. No. 5(a); NT, at 20, 23–25, 48–49.)

14. Contrary to 52 Pa. Code §31.122(2), Respondent's "Estimated Cost of Services" form **does have imprinted** in the heading in letters less than ½-inch high the words *Estimated Cost of Services*. (BT&S Exh. No. 5; ALJ Exh. No. 1, Par. Nos. 6(b), 10(b), 13(b), 16(b), 17(b), 18(b), and 21.)

15. The Commission's regulation provides that "[t]he original or a true copy of each completed estimate of charges shall be given to the shipper, and a copy thereof shall be maintained by the carrier as part of its record of transportation." (52 Pa. Code §31.122(2); notice: 66 Pa.C.S. §332(e) and §331(g); 52 Pa. Code §5.408.)

16. In five instances, the Respondent failed to provide shippers with a written copy of an estimate of charges, as required by 52 Pa. Code §31.122(2); these violations are alleged in Par. Nos. 4(b), 7(a), 8(a), 12(a), and 15(b) of the Complaint. (ALJ Exh. No. 1; NT, at 43–45.)

17. The Commission's regulation provides that "[w]hen a prospective shipper requests moving service and before an order for service is prepared, the household goods carrier shall furnish the prospective shipper with a statement entitled 'Information for Shippers' and that "[t]he carrier shall retain a copy of this certification [which is part of the 'Information for Shippers' form] with shipping order." (52 Pa. Code §31.121(a) and §31.121(b); notice: 66 Pa.C.S. §332(e) and §331(g); 52 Pa. Code §5.408.)

18. After amendment to the Complaint, BT&S alleges 13 instances in which Fix failed to furnish the shipper with an Information for Shippers form before an order for service was prepared. (NT, at 34–35; ALJ Exh. No. 1, Par. Nos. 22, 4(c), 5(c), 6(c), 7(c), 8(b), 9(c), 10(c), 11(c), 12(b), 13(c), 14(b), 15(c), 17(c), and 18(c); the allegation at Par. No. 13(c) was withdrawn by BT&S.)

19. Fix's policy of dating the Information for Shippers form using the date on which the shipper returns the form to Fix, i.e., the date of the move, thwarts effective enforcement of the Commission's regulation. (NT, at 42-43.)

DISCUSSION

A. Introduction

The Respondent, Donald Fix, is a jurisdictional transporter of household goods in use. This Complaint arises out of the audit, conducted on July 18 and 19, 2001, by the Pennsylvania Public Utility Commission's Bureau of Transportation and Safety of the jurisdictional business records of Donald Fix, t/a Don Farr Moving Company.² The Complaint alleges a medley of violations of the Public Utility Code³ (Code) and the Commission's regulations.⁴ The Complaint alleges (1) charging rates different from tariff rates (thereby violating 66 Pa.C.S. §1303);⁵ (2) failing to file quarterly reports with the Commission showing instances when charges exceeded an estimate by more than ten percent (thereby violating 52 Pa. Code §31.124);⁶ (3) service outside the authorized territory (thereby violating 66 Pa.C.S. §1102(a)(1)(i));⁷ (4) failing to have the heading on the Estimated Cost of Services form in letters one-half inch in height (thereby violating

² ALJ Exh. No. 1 (Par. 3).

³ See 66 Pa.C.S. §101-3316, as amended.

⁴ See 52 Pa. Code §1.1 *et seq.*

⁵ See ALJ Exh. No. 1 (Par. Nos. 19, 24, 6(a), 7(b), 10(a), 11(b), 15(a), 16(a), and 17(a)).

⁶ See ALJ Exh. No. 1 (Par. Nos. 23, 13(d), and 18(d)).

⁷ See ALJ Exh. No. 1 (Par. Nos. 20, 4(a), 5(a), 9(a), 13(a), and 18(a)).

52 Pa. Code §31.122(2));⁸ (5) failing to provide shippers with an Estimated Cost of Services form (thereby violating 52 Pa. Code §31.122(2));⁹ and (6) failing to furnish shippers with an Information for Shippers written statement before preparing an order of service (thereby violating 52 Pa. Code §31.121(a)).¹⁰ The total monetary penalty sought, before the withdrawal of certain allegations is \$8050: \$1350 in respect of item No. 1, above; \$200 in respect of item No. 2, above; \$1250 in respect of item No. 3, above; \$600 in respect of item No. 4, above; \$2250 in respect of item No. 5, above; and \$1500 in respect of item No. 6, above.

Fix does not contest the violations alleged with respect to item Nos. 1 and 2, above, and no evidence of mitigating circumstances was offered.¹¹ Hence, a monetary penalty of \$1550 is imposed with respect to the violations comprehended by these two items. With respect to item No. 3, above, the Complaint contains five allegations of wrongdoing, four of which are admitted. A penalty of \$250 is sought for each violation. Hence, a penalty of \$1000 is not at issue with respect to item No. 3. One instance of allegedly furnishing service outside of the authorized territory remains at issue, along with the \$250 penalty.

With respect to item Nos. 4, 5, and 6, above, Fix offers explanations or mitigating circumstances in an effort to have the penalties sought waived or reduced, or, alternatively, to have the underlying allegations dismissed.

⁸ See ALJ Exh. No. 1 (Par. Nos. 21, 6(b), 10(b), 13(b), 16(b), 17(b), and 18(b)).

⁹ See ALJ Exh. No. 1 (Par. Nos. 21, 4(b), 5(b), 7(a), 8(a), 9(b), 11(a), 12(a), 14(a), and 15(b)).

¹⁰ See ALJ Exh. No. 1 (Par. Nos. 22, 4(c), 5(c), 6(c), 7(c), 8(b), 9(c), 10(c), 11(c), 12(b), 13(c), 14(b), 15(c), 17(c), and 18(c)). The allegation at Par. No. 13(c) was withdrawn by BT&S.

¹¹ See NT, at 28–29.

B. Burden of Proof

A person who or that brings a complaint against a jurisdictional public utility, under Section 701 of the Public Utility Code (Code),¹² usually incurs the burden of proving by a preponderance of the evidence adduced at hearing those facts necessary to support the relief sought. To prevail on a complaint, a complainant normally must demonstrate, according to statutory- or decisional-law criteria that the respondent utility has violated a “statute which the Commission has jurisdiction to administer” or violated a “regulation or order of the Commission.”¹³ Subsection 332(a) of the Code is construed and applied by the Commission to require a party seeking affirmative relief from the Commission, as the BT&S is seeking in this proceeding, to bear the burden of producing or coming forward with the evidence and to bear the ultimate burden of persuading the Commission by a preponderance of the evidence that the relief sought is justified under the circumstances.¹⁴ The burden of proof imposed by Subsection 332(a) expressly applies, “[e]xcept as may be otherwise provided in section 315....”¹⁵ In *Pa. P.U.C. v. Tropicano Airport Shuttle*,¹⁶ when the Commission was considering alleged violations of its regulations by a motor carrier, it noted (op. at 5), citing Section 315 of the Public Utility Code, that “the burden is on the utility to demonstrate that it is in compliance with

¹² See 66 Pa.C.S. §§101–3316, as amended.

¹³ See 52 Pa. Code §5.21(a); see, also, 66 Pa.C.S. §701.

¹⁴ See 66 Pa.C.S. §332(a). Moreover, findings by the Commission in adversarial proceedings must be supported by *substantial* evidence. See, for example, Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704; *Yellow Cab Co. v. Pa. P.U.C.*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

¹⁵ See 66 Pa.C.S. §332(a).

¹⁶ Docket No. A-00110899C9601 (Opinion and Order entered May 22, 1997).

[the Commission's] regulations and orders.”¹⁷ Subsection 315(b) places the burden of proof on a public utility to prove that it is in compliance with a “determination” or “order” of the Commission.¹⁸

C. Service Offered To A Territory Different From That Authorized

A common carrier by motor vehicle, including a person transporting household goods in use, is a jurisdictional public utility subject to the requirements of Subsection 1102(a)(1)(i) of the Public Utility Code (Code),¹⁹ as well as the Commission's regulations.²⁰ Section 1102 of the Code provides, in part, as follows:

§1102. Enumeration of acts requiring certificate

(a) General rule.—Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

¹⁷ See 66 Pa.C.S. §315. Moreover, Subsection 315(c) of the Code also places the burden of proof on a public utility when the adequacy of services or facilities is at issue: “In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.” A complaint brought by the BT&S is tantamount to a “proceeding upon the motion of the commission.” 52 Pa. Code §315(c).

¹⁸ The Commission, apparently, construes “determinations” to include its regulations. *Tropiano Airport Shuttle*, *supra*; 52 Pa. Code §315(b).

¹⁹ See 66 Pa.C.S. §§101–3316, as amended.

²⁰ The definitions of “public utility,” “common carrier,” and “common carrier by motor vehicle” appearing at section 102 of the Public Utility Code result in a common carrier by motor vehicle, including a household mover, being a public utility subject to the jurisdiction of the Commission. 66 Pa.C.S. §102; see, also, 52 Pa. Code §§31.21–31.37 and §§31.121–31.130.

(1) For any public utility to begin to offer, render, furnish or supply within the Commonwealth service of a different nature or to a different territory than that authorized by:

(i) A certificate of public convenience granted under this part or under the former provisions of the act of...May 28, 1937...known as the "Public Utility Law."

(Footnote omitted.) By negative implication Subsection §1102(a)(1)(i) of the Code makes it unlawful for a public utility, like the Respondent, to furnish service, within the Commonwealth, to a territory different from that authorized by a certificate of public convenience issued to the public utility.

The Respondent, on Oct. 23, 2000, transported household goods for Evie Cameron from New Brighton, Beaver County, Pa., to North Versailles, Allegheny County, Pa., for compensation in the amount of \$720. By Order of the Commission,²¹ the Respondent, as relevant, is authorized "To transport, as a Class D carrier, household goods in use from points in the borough [*sic*] of Braddock, Allegheny County, and within five (5) miles by usually traveled highways of the limits of the said borough, to points within thirty (30) miles by usually traveled highways of the limits of the said borough, and vice versa."²² BT&S offered testimony that based on computer software used to compute highway mileage between points, routinely used by BT&S to verify lawful service by carriers, North Versailles, the Evie Cameron destination, is not within five miles of the limits of the Borough of Braddock. BT&S determined that the distance between the Borough of Braddock and North Versailles (the Cameron destination) is 8.2 miles. This testimony is *prima facie* evidence that Fix furnished unauthorized or unlawful transportation services.

²¹ Entered March 3, 1987, at Docket No. A-00107168.

²² See BT&S Exh. No. 4.

Because the Cameron move, at issue, was made under color of authority of the Commission's Order, it is Respondent's burden to show by a preponderance of the evidence that in fact the Cameron destination (104 N. Broadway Ave., N. Versailles, Pa.) is within five miles by usually traveled highways of the limits of the Borough of Braddock—i.e., it is Respondent's burden to show that he complied with the Commission's Order, when performing the service at issue.²³ To attempt to show the Cameron move to be lawful, the only evidence Respondent offered was the cross-examination testimony of BT&S's witness to the effect that it is **possible** that there is a highway route between North Versailles and Braddock that is five miles.²⁴ Fix failed to satisfy his burden of proof. Clearly, the cited cross-examination testimony of BT&S's witness does not overcome the direct testimony from the same witness that the distance between North Versailles and the Borough of Braddock is 8.2 miles.²⁵ If there is a route that is five miles or less, it was the Respondent's burden to affirmatively show that route.

The transportation service furnished by the Respondent is a violation of Subsection § 1102(a)(1)(i) of the Code. The argument offered by the Respondent is not persuasive. The BT&S asks to have a monetary penalty of \$250 imposed for the violation. That penalty is ordered below, in addition to the \$1000 penalty in respect of the four similar allegations that were admitted to.

²³ See 66 Pa.C.S. §315(b).

²⁴ See NT, at 23–25, 48–49.

²⁵ See NT, at 20.

D. Estimated Cost of Services Form Heading In One-half Inch Letters

The Commission's regulation provides that "[a] common carrier by motor vehicle engaged in transporting household goods in use between points in this Commonwealth shall prepare an Estimate of Charges for the proposed service, on a form and in the following manner:.... Across the top of each form there shall be imprinted in letters not less than 1/2 inch high the words 'Estimated Cost of Services'[sic]."²⁶ The BT&S complaint alleges BT&S's audit disclosed that in six instances the Respondent's Estimated Cost of Services form did not conform to the regulation.²⁷ The letters imprinted across the top of Respondent's form—appearing as "ESTIMATED COST OF SERVICES" in the first line and "ORDER OF SERVICE" in the second line—are about 1/8 inch high; the two printed lines making up the heading, taking into account the space between the lines, together are about 3/8 inch high.²⁸

Respondent argues that 52 Pa. Code §31.122(2), the involved regulation, does not say that the required letters or heading cannot be "blocked."²⁹ Contrary to the argument made, the entire block is less than 1/2 inch high. Finally, Respondent argues that the purpose of the Commission's regulation is to ensure shippers are on notice as to what they are agreeing to by signing the form. This purpose is effectively served, argues the Respondent, by putting the heading at center-top of the page, with white space to the

²⁶ See 52 Pa. Code §31.122(2).

²⁷ See ALJ Exh. No. 1, Par. Nos. 6(b), 10(b), 13(b), 16(b), 17(b), 18(b), and 21; BT&S Exh. No. 5.

²⁸ See BT&S Exh. No. 5.

²⁹ See NT, at 48.

sides of the heading.³⁰ Contrary to Respondent's representation, BT&S's sample form of Respondent's shows imprinted matter on both sides of the second line of the heading.

The Respondent failed to meet his burden of proof and failed to offer circumstances sufficient to mitigate the penalty sought. BT&S asks that a \$100 penalty be imposed for each of the six violations. A \$600 penalty will be ordered.³¹

E. Estimated Cost of Services Form Not Provided To Shippers

The Commission's regulation provides that "[t]he original or a true copy of each completed estimate of charges shall be given to the shipper, and a copy thereof shall be maintained by the carrier as part of its record of transportation."³² The BT&S complaint alleges BT&S's audit disclosed nine instances in which the Respondent failed to provide a completed Estimated Cost of Services form to the shippers.³³ One allegation was withdrawn. The BT&S asks to have a penalty of \$250 imposed for each violation.³⁴ Therefore, a total penalty of \$2000 is sought.

With respect to the allegations at Par. Nos. 9(b) and 11(a) of the Complaint, BT&S's audit showed that estimates had been given to the shippers by telephone. The telephone-estimate forms showed the dates on which the moves were made, but did not

³⁰ See NT, at 27, 48.

³¹ See ALJ Exh. No. 1 (Par. Nos. 21, 6(b), 10(b), 13(b), 16(b), 17(b), and 18(b)).

³² See 52 Pa. Code §31.122(2).

³³ See NT, at 29–30; ALJ Exh. No. 1, Par. Nos. 21, 4(b), 5(b) [withdrawn at hearing, NT, at 15], 7(a), 8(a), 9(b), 11(a), 12(a), 14(a), and 15(b).

³⁴ ALJ Exh. No. 21, Par. No. 21.

show the dates on which the estimates were furnished.³⁵ With respect to the allegation at Par. No. 14(a) of the Complaint, BT&S's audit showed that an estimate had been given to the shipper by telephone, but the estimate bore no date.³⁶

Fix testified that when a shipper wants to move only a few items, Fix does not deem it necessary to send out an estimator, so only a telephone estimate is furnished to the prospective shipper. Fix notes that in the cases of the allegations contained in Par. Nos. 9(b), 11(a), and 14(a) of the Complaint, the shippers moved only two, three, and four items, respectively.³⁷ This appears to be a reasonable explanation for waiving the penalty sought by the Complaint, with respect to the three violations explained by the Respondent. The Respondent failed to satisfy his burden of proof with respect to the other five allegations. Therefore, a \$250 penalty will be imposed in respect of Par. Nos. 4(b), 7(a), 8(a), 12(a), and 15(b) of the Complaint, or a total penalty of \$1250.

F. Failure to Furnish Information for Shippers Form Before Order for Service

The Commission's regulation provides that "[w]hen a prospective shipper requests moving service and before an order for service is prepared, the household goods carrier shall furnish the prospective shipper with a statement entitled 'Information for Shippers,' in accordance with the following specimen" and that "[t]he carrier shall retain a copy this certification [which is part of the 'Information for Shippers' form] with shipping order."³⁸ The BT&S complaint alleges BT&S's audit disclosed 14 instances in which the Respondent failed to furnish an Information for Shippers form **before** an order

³⁵ See NT, at 31–33.

³⁶ See NT, at 35–36.

³⁷ See NT, at 44–45, 47–48.

³⁸ See (52 Pa. Code §31.121(a) and §31.121(b).

for service was prepared.³⁹ The allegation contained in Par. No. 13(c) of the Complaint was withdrawn, leaving 13 alleged violations.⁴⁰

The Information-for-Shipper forms at issue were found in the audited files, but dated the day of the respective moves.⁴¹ The Commission's regulation requires that the Information-for-Shippers form be furnished to a prospective shipper before the order of service is prepared. Fix testified that it is his policy to make sure a customer receives the form before taking an order for service. Further, he testified that a shipper signs the form as soon as it is received; then the shipper returns the signed form to Fix at the time of the move. The stated policy is for Fix to date the form using the date on which the shipper returns it to Fix, i.e., the date of the move.⁴²

Assuming that Fix's testimony is credible, the stated policy and procedure does not mitigate the violations. The so-called policy thwarts effective enforcement of the Commission's regulation. Again, assuming strict compliance, in fact, by a carrier with the Commission's regulation, there is no way, under the policy supposedly implemented by Fix, to verify that compliance. Compliance with the regulation is intended to protect the public. To the extent that the regulation is not strictly adhered to (and there is no way to verify this, absent the form being properly dated), the shipping public receives less protection than intended by the Commission.

³⁹ See ALJ Exh. No. 1 (Par. Nos. 22, 4(c), 5(c), 6(c), 7(c), 8(b), 9(c), 10(c), 11(c), 12(b), 13(c), 14(b), 15(c), 17(c), and 18(c)). The allegation at Par. No. 13(c) was withdrawn by BT&S.

⁴⁰ See NT, at 34–35.

⁴¹ See NT, at 38.

⁴² See NT, at 42–43.

The BT&S asks to have a monetary penalty of \$100 imposed for each of the violations for a total penalty of \$1300.⁴³ That penalty is ordered below.

G. Conclusion

The Complaint alleges that Fix charged rates different from tariff rates, thereby violating 66 Pa.C.S. §1303. At hearing Fix did not contest the violations. A penalty of \$2250 is ordered.⁴⁴ Second, the Complaint alleges Fix failed to file quarterly reports with the Commission showing instances when charges exceeded an estimate by more than ten percent, thereby violating 52 Pa. Code §31.124. Fix admitted to these violations. A penalty of \$200 is ordered.⁴⁵ Third, the Complaint alleges that Fix furnished service outside the authorized territory, thereby violating 66 Pa.C.S. §1102(a)(1)(i).⁴⁶ Fix admitted to four violations and litigated the fifth. Fix did not satisfy his burden of proof. A penalty of \$1250 is ordered. Fourth, the Complaint, as amended, alleges Fix failed to have the heading on the Estimated Cost of Services form in letters one-half inch in height, thereby violating 52 Pa. Code §31.122(2).⁴⁷ Fix did not satisfy his burden of proof. A penalty of \$600 is ordered. Fifth, the Complaint alleges Fix failed to provide shippers with an Estimated Cost of Services form, thereby violating 52 Pa. Code §31.122(2).⁴⁸ Fix adequately explained three of the eight alleged violations, but otherwise failed to satisfy his burden of proof. A penalty of \$1250 is ordered. Sixth, and finally, the Complaint alleges Fix failed to furnish shippers, on 13 occasions, with an Information for

⁴³ See ALJ Exh. No. 1, Par. No. 22.

⁴⁴ See ALJ Exh. No. 1, Par. Nos. 20 and 24.

⁴⁵ See ALJ Exh. No. 1, Par. Nos. 23.

⁴⁶ See ALJ Exh. No. 1, Par. Nos. 20.

⁴⁷ See ALJ Exh. No. 1, Par. Nos. 21.

⁴⁸ See ALJ Exh. No. 1, Par. Nos. 21.

Shippers form **before** preparing an order of service, thereby violating 52 Pa. Code §31.121(a).⁴⁹ Fix failed to satisfy his burden of proof. A penalty of \$1300 is ordered. The total penalty ordered for all violations is \$6850.

The Order below requires the Respondent to remit, within thirty (30) days after service of the Commission's order, a total monetary penalty of \$6850 by certified or cashier's check or money order made payable to the Pennsylvania Public Utility Commission, as provided for in Section 3301 and Section 3315 of the Public Utility Code (66 Pa.C.S. §3301 and §3315).

CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
2. The Pennsylvania Public Utility Commission has delegated its authority to initiate certain adversarial proceedings, like this proceeding, that are of a prosecutorial nature to the Bureau of Transportation and Safety, the nominal complainant here; the Bureau of Transportation and Safety has legal standing to bring and to prosecute the Complaint.
3. To determine if a party has satisfied the allocated burden of proof as imposed by the Public Utility Code, all of the evidence of record must be considered and weighed, taking into account, among other things, the demeanor or credibility of the witnesses. 66 Pa.C.S §315(b), §315(c), and §332(a).

⁴⁹ See ALJ Exh. No. 1, Par. No. 22.

4. As the Respondent in this proceeding, Donald Fix had the burden of coming forward with evidence to show by a preponderance of that evidence that he was in compliance with the Commission's regulations, determinations, and orders. 66 Pa.C.S. §315.

5. The Respondent, Donald Fix, failed to satisfy his burden of proof in order to show by a preponderance of the evidence that he was in compliance with the Commission's regulations, determinations, and orders or that mitigating circumstances (except with respect to three violations of 52 Pa. Code §31.122(2)) warrant waiving or reducing the monetary penalties proposed by the Bureau of Transportation and Safety. 66 Pa.C.S. §315.

6. Reasonable monetary penalties are properly imposed on a jurisdictional public utility who or that is found, either by stipulation and admission or after hearing or both, to have violated a law or regulation the Commission has jurisdiction to enforce or is found to have violated an order or regulation of the Commission after the utility has had notice and an opportunity to be heard on the matter(s) put at issue by the pleadings—that is, unless the facts appearing of record support waiver or reduction of the penalty sought by the complaint. 66 Pa.C.S. §3301 and §3315.

ORDER

THEREFORE, IT IS ORDERED, as follows:

1. That the Complaint, as amended at hearing, captioned *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety, v. Donald Fix, t/a Don Farr Moving Company*, at Docket No. A-00107168C0107, is sustained.

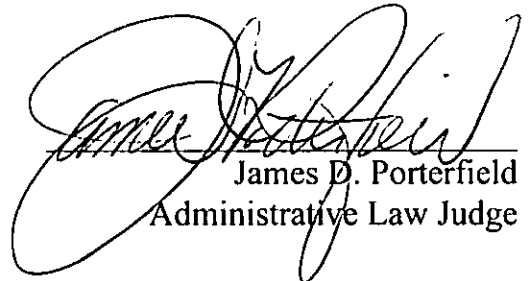
2. That the Respondent shall remit, within 30 days after service of the Commission's order, a monetary penalty of \$6850 by certified or cashier's check or money order made payable to the Pennsylvania Public Utility Commission, as provided for in Section 3301 and Section 3315 of the Public Utility Code (66 Pa.C.S. §3301 and §3315); the check or money order must be mailed, using the U.S. Postal Service, to the following address:


Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

3. That the Respondent cease and desist from further violations of the Public Utility Code, as amended, 66 Pa.C.S. §§101-3316, and of the Commission's regulations at 52 Pa. Code §1.1 *et seq.*

4. That the Complaint captioned *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety, v. Donald Fix, t/a Don Farr Moving Company*, at Docket No. A-00107168C0107, be terminated and the record marked "closed."


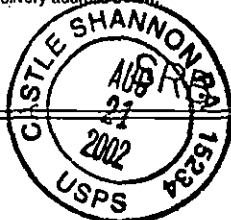
Dated: August 7, 2002


James D. Porterfield
Administrative Law Judge

2. Article Number		COMPLETE THIS SECTION ON DELIVERY	
 7106 4575 1293 1628 3798		A. Received by (Please Print Clearly) <i>M. Lukas</i>	B. Date of Delivery <i>8-21</i>
3. Service Type CERTIFIED MAIL		C. Signature <i>M. Lukas</i>	
4. Restricted Delivery? (Extra Fee) Yes		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		D. Is delivery address different from item 1? If YES, enter delivery address below.	
A-00107168C0107 ID DONALD FIX T/A DON FARR MOVING COMPANY 4920 BUTTERMILK HOLLOW RD WEST MIFFLIN PA 15122		SRB	

PS Form 3811, June 2000

Domestic Return Receipt

2. Article Number		COMPLETE THIS SECTION ON DELIVERY	
 7106 4575 1293 1628 3811		A. Received by (Please Print Clearly)	B. Date of Delivery <i>8-21-02</i>
3. Service Type CERTIFIED MAIL		C. Signature <i>[Signature]</i>	
4. Restricted Delivery? (Extra Fee) Yes		<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		D. Is delivery address different from item 1? If YES, enter delivery address below.	
A-00107168C0107 ID LOUIS W EMMI ESQUIRE 201 LEBANON SHOPS 300 MT LEBANON BLVD PITTSBURGH PA 15234			

PS Form 3811, June 2000

Domestic Return Receipt

ACKNOWLEDGEMENT ^{SPB} OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 22nd day of Aug, 2002

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Initial Decision an official Commission document entered, issued, or otherwise promulgated under date of August 19, 2002 at Docket No.A-00107168C0107 on behalf of:

R K SMITH JR ESQUIRE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION & SAFETY
PO BOX 3265 KEYSTONE BUILDING
HARRISBURG PA 17105-3265

R.K. Smith
Signature
RECEIVED
JUG 22 AM 10:38
SECRETARY'S BUREAU

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

RECEIVED

AUG 22 2002
BUREAU OF T & S
LEGAL DIVISION

Act 294

SRB

RECEIVED
02 SEP -9 PM 1:58
P.A.F.U.C.
SECRETARY'S BUREAU

Case Identification:

A-00107168C0107; PA, UC,
Bureau of T&S v. Donald Fix,
t/a Don Farr Moving Company

Initial Decision By:

ALJ James D. Porterfield

Deadline for Return to OSA:

September 3, 2002

DOCUMENT
FOLDER

This decision has not been reviewed by OSA.

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AUG 22 2002

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Glen Thomas

Commissioner

August 21, 2002

Date

DOCKETED

SEP 10 2002

Act 294

Case Identification: A-00107168C0107; PA PUC,
Bureau of T&S v. Donald Fix,
t/a Don Farr Moving Company

Initial Decision By: ALJ James D. Porterfield

Deadline for Return to OSA: September 3, 2002

This decision has not been reviewed by OSA.

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OFFICE OF SPECIAL
ASSISTANTS

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Commissioner

Date

I do not want full Commission review of this decision.

Robert K. Bloom /rk
Commissioner

9/3/02
Date

SW

Act 294

Case Identification:

A-00107168C0107; PA PUC,
Bureau of T&S v. Donald Fix,
t/a Don Farr Moving Company

Initial Decision By:

ALJ James D. Porterfield

Deadline for Return to OSA:

September 3, 2002

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This decision has not been reviewed by OSA.

AUG 29 2002

OFFICE OF SPECIAL
ASSISTANTS

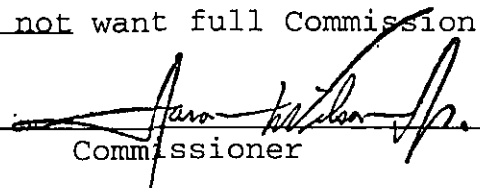
* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.



Commissioner

August 29, 2002

Date

Act 294

Case Identification: A-00107168C0107; PA PUC,
Bureau of T&S v. Donald Fix,
t/a Don Farr Moving Company

Initial Decision By: ALJ James D. Porterfield

Deadline for Return to OSA: September 3, 2002

This decision has not been reviewed by OSA.

RECEIVED

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AUG 23 2002

OFFICE OF SPECIAL
ASSISTANTS

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Commissioner

Date

I do not want full Commission review of this decision.

Thomas J. Fitzgerald

Commissioner

8/22/02

Date

Act 294

Case Identification: A-00107168C0107; PA PUC,
Bureau of T&S v. Donald Fix,
t/a Don Farr Moving Company

Initial Decision By: ALJ James D. Porterfield

Deadline for Return to OSA: September 3, 2002

RECEIVED

This decision has not been reviewed by OSA.

SEP 3 2002

OFFICE OF SPECIAL
ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I ~~do not~~ want full Commission review of this decision.

✓ Kim Fitzgerald
Commissioner

9/3/02
Date

DATE: September 16, 2002

SUBJECT: A-00107168C0107

SRB

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary

Pennsylvania Public Utility Commisison, Bureau of Transportation & Safety

Vs.

Donald Fix, t/a Don Farr Moving Company

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

JEP

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.

DOCUMENT
FOLDER

DOCKETED
SEP 18 2002