



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

IN REPLY PLEASE  
REFER TO OUR FILE  
C-2012-2314291

June 24, 2015

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


Re: Pennsylvania Public Utility Commission, Bureau of Investigation  
and Enforcement v. Herbert B. Smith & Agee Copart t/a Samuel W.  
Smith Moving & Storage  
Docket No. C-2012-2314291  
**Reply to Exception**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Reply of the Bureau of Investigation and Enforcement to the Exception of Herbert B. Smith & Agee Copart t/a Samuel W. Smith Moving & Storage 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 Cynthia Williams Fordham  
As per certificate of service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2012-2314291
	:	
Herbert B. Smith & Agee Copart t/a	:	
Samuel W. Smith Moving & Storage	:	

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**REPLY EXCEPTION  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Pursuant to 52 Pa. Code § 5.535, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) files this Reply to the Exception of Herbert B. Smith & Agee Copart t/a Samuel W. Smith Moving & Storage (Respondent or Company) in the above-captioned proceeding. The purpose of I&E's Reply is to update the status of Respondent's outstanding assessment in this matter.

**I. BACKGROUND**

On July 17, 2012, I&E filed a Formal Complaint (Complaint) against the Company alleging that it failed to pay assessments to the Commission for the July 1, 2010 to June 30, 2011 (2010-2011) and July 1, 2011 to June 30, 2012 (2011-2012) fiscal years. I&E alleged that the total outstanding assessment balance was \$1,742.00. Further, I&E alleged that the Company's actions violated Section 510(c) of the Public Utility

Code, 66 Pa.C.S. § 510(c), and I&E requested a civil penalty of 15% of the outstanding amount due, or \$260.00. If payment of the civil penalty and assessments was not made, then I&E requested revocation of Respondent's Certificate of Public Convenience, that the Commission certify Respondent's automobile registrations to the Pennsylvania Department of Transportation for suspension or revocation and that the matter be referred to the Pennsylvania Office of Attorney General for appropriate action.

On October 12, 2012, I&E filed an Amended Complaint that mirrored the initial Complaint except that it no longer sought a civil penalty.

Respondent filed an Answer to the Amended Complaint on October 18, 2012, explaining that its work has been declining for the last few years. In addition, Respondent's Answer enclosed a check in the amount of \$525.00.<sup>1</sup>

An Initial Hearing in this matter took place on March 8, 2013 in Philadelphia before Administrative Law Judge (ALJ) Cynthia Williams Fordham. Both the Company and I&E appeared and presented testimony and exhibits.

On June 2, 2015, an Initial Decision was issued that sustained I&E's Complaint and directed Respondent to pay its outstanding assessment of \$1,742.00 within thirty days after service of the decision.

Respondent filed a letter dated June 19, 2015.<sup>2</sup> Should Respondent's letter be deemed by the Commission as an Exception to the Initial Decision pursuant to Section

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<sup>1</sup> I&E was not served with a copy of the Company's Answer and was unaware that one had been filed. On November 12, 2012, I&E filed a Motion for Default Judgment. On December 18, 2012, I&E withdrew its Motion for Default Judgment upon discovering, for the first time, the Company's Answer to I&E's Amended Complaint.

<sup>2</sup> The letter was date-stamped as being received by the Secretary's Bureau on June 15, 2015.

5.533 of the Commission's regulations, 52 Pa. Code § 5.533, even though it fails to meet the requirements of that regulation in that it is not numbered, does not identify the finding of fact or conclusion of law to which an exception is taken, or cite to the relevant pages of the decision, then I&E's response is intended to be a reply pursuant to Section 5.535 of the Commission's regulations, 52 Pa. Code § 5.535.

## II. REPLY EXCEPTION

### **The Company Satisfied the Outstanding Assessment Balance Prior to the Issuance of the Initial Decision**

The ALJ correctly determined that the Company violated Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c), by failing to timely pay the Commission's assessment for the 2010-2011 and 2011-2012 fiscal years. The ALJ also ordered Respondent to pay the outstanding assessment amount of \$1,742.00.

In its Exception, the Company asserts that it paid the assessments at issue in this proceeding. A review of the Commission's fiscal records confirms that after the Initial Hearing took place and prior to the issuance of the Initial Decision in this matter, Respondent satisfied its outstanding assessment amount of \$1,742.00 for the 2010-2011 and 2011-2012 fiscal years. Therefore, the Company has already complied with Ordering Paragraph No. 2 of the Initial Decision. I&E agrees that the relief sought by I&E in the Amended Complaint and granted by the Initial Decision has been satisfied and the matter can be marked closed.

**III. CONCLUSION**

For the reasons set forth above, I&E respectfully requests that any Commission Order issued reflect that Respondent complied with Ordering Paragraph No. 2 of the Initial Decision by paying the outstanding assessment amount of \$1,742.00 for the 2010-2011 and 2011-2012 fiscal years.

Respectfully Submitted,



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Stephanie M. Wimer  
Prosecutor  
PA Attorney ID # 207522

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Bureau of Investigation and Enforcement  
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[stwimer@pa.gov](mailto:stwimer@pa.gov)

Dated: June 24, 2015

## CERTIFICATE OF SERVICE

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

Mr. Herbert B. Smith, Sr.  
S. W. Smith Moving & Storage Co.  
1728 Meadow Street  
Philadelphia, PA 19124  
sw\_smith@verizon.net

*Service by Electronic Mail:*

Pennsylvania Public Utility Commission,  
Office of Special Assistants  
Ra-OSA@pa.gov



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Stephanie M. Wimer  
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Dated: June 24, 2015