



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

IN REPLY PLEASE
REFER TO OUR FILE

July 31, 2015

Via Electronic Filing

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. Bill Rohrbaugh's Charter Service Inc.
Docket No. C-2014-2456403

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Answer, Nunc Pro Tunc, to the Petition for Rescission of Bill Rohrbaugh's Charter Service Inc. in the above-captioned matter.

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

Please do not hesitate to contact me if you have any questions at (717) 705-4366.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Myers", is written over a faint, larger signature.

Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Enclosure

cc: As per certificate of service
Cheryl Walker Davis, OSA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2014-2456403
v.	:	
	:	
Bill Rohrbaugh's Charter Service Inc.,	:	
Respondent	:	

**ANSWER, NUNC PRO TUNC, OF THE BUREAU OF INVESTIGATION AND
ENFORCEMENT TO THE "PETITION FOR RESCISSION" OF BILL
ROHRBAUGH'S CHARTER SERVICE INC.**

I. INTRODUCTION

On June 11, 2015, the Pennsylvania Public Utility Commission (Commission) entered an Opinion and Order granting the Bureau of Investigation and Enforcement's (I&E) Motion for Default Judgment and sustaining I&E's Complaint in the above-captioned matter (hereinafter referred to as June 11, 2015 Order).

I&E filed a Complaint against Bill Rohrbaugh's Charter Service Inc. (Respondent) on December 5, 2014, alleging that Respondent violated Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c), by failing to pay the Commission's assessment of \$771 for the July 1, 2010 to June 30, 2011 Fiscal Year. A Notice was attached to the Complaint and informed Respondent that it must file an Answer within twenty (20) days of the date of service of the Complaint. On December 6, 2014, Respondent signed a receipt confirming that it received the Complaint.

Although I&E's Complaint was served by certified mail and Respondent signed a form acknowledging receipt of the Complaint, Respondent did not answer the Complaint. Moreover, Respondent did not pay any amount of its outstanding assessment in response to I&E's Complaint.

On May 18, 2015, I&E filed a Motion for Default Judgment. Respondent took no action in response to I&E's Motion for Default Judgment, including answering the Motion or paying its outstanding assessment to the Commission.

The Commission granted I&E's Motion and sustained I&E's Complaint in the June 11, 2015 Order. The Commission directed Respondent to remit \$771 regarding its July 1, 2010 to June 30, 2011 Fiscal Year assessment and if Respondent failed to make payment, then Respondent's Certificate of Public Convenience would be cancelled, the Bureau of Administrative Services, Assessment Section, would refer this matter to the Pennsylvania Office of Attorney General for appropriate action, and the Commission would request that the Pennsylvania Department of Transportation place an administrative hold on Respondent's vehicle registrations.

On July 6, 2015, Respondent filed a *pro-se* letter with the Commission's Secretary's Bureau (hereinafter referred to as July 6, 2015 Letter). Although Respondent's July 6, 2015 Letter was filed after the expiration of the period of time for filing a Petition for Reconsideration in accordance with 52 Pa. Code § 5.572(c) and Respondent failed ask in its July 6, 2015 Letter for reconsideration, modification, or rescission of the June 11, 2015 Order in accordance with 52 Pa. Code § 5.572(a), the

Commission elected to classify the July 6, 2015 Letter as a “Petition for Rescission” of the Commission’s June 11, 2015 Order.

In its July 6, 2015 Letter, Respondent ignored the requirement in Section 5.572(a) of the Commission’s regulations, 52 Pa. Code § 5.572(a), by failing to specify, in numbered paragraphs, the order involved, the points relied upon by Respondent, and its request for reconsideration, modification, or rescission of the June 11, 2015 Order. Respondent ignored Sections 1.57(a) and 5.572(b) of the Commission’s regulations, 52 Pa. Code §§ 1.57(a) and 5.572(b), by failing to enclose a Certificate of Service with its July 6, 2015 Letter. Additionally, Respondent ignored the requirement in Section 1.36(a) of the Commission’s regulations, 52 Pa. Code § 1.36(a), by failing to include a completed verification statement with its July 6, 2015 Letter.

Pursuant to Section 5.572(e) of the Commission’s regulations, 52 Pa. Code § 5.572(e), I&E files this Answer, Nunc Pro Tunc, to Respondent’s “Petition for Rescission” filed on July 6, 2015, and I&E requests that its Answer be deemed timely filed.¹

II. STANDARD OF REVIEW

Subsections 703(f) and (g) of the Public Utility Code, 66 Pa.C.S. §§ 703(f) and

¹ Pursuant to Section 5.572(e) of the Commission’s regulations, 52 Pa. Code § 5.572(e), answers to a Petition for Rescission must be filed and served within ten (10) days of service of a Petition. I&E submits that its answer is timely because Respondent’s July 6, 2015 *pro-se* letter was filed after the expiration of the period of time for filing a Petition for Reconsideration in accordance with 52 Pa. Code § 5.572(c). Moreover, I&E only became aware that the Commission’s Secretary’s Bureau deemed Respondent’s July 6, 2015 *pro-se* letter as a “Petition for Rescission” by independently searching the Commission’s electronic database. The Secretary’s Bureau did not issue a secretarial letter notifying the parties of record that the Commission had exercised its discretion to accept Respondent’s untimely filed July 6, 2015 *pro-se* letter and treat it as a Petition for Rescission. Additionally, Respondent’s alleged “Petition for Rescission” does not conform with Section 5.572 of the Commission’s regulations, 52 Pa. Code §§ 5.572(a) and (b), regarding the format, content, verification, and service of a petition.

(g), establish a party's right to seek relief following the issuance of the Commission's final decisions and permit the Commission to rescind and amend orders. Such requests for relief must be consistent with Section 5.572 of the Commission's regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. A petition to modify or rescind a final Commission Order may only be granted *judiciously* and under appropriate circumstances because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 416 A.2d 461 (1980). Parties cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (Order entered December 17, 1982), (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

Petitions for rescission are governed by *Duick*, 56 Pa. P.U.C. 553, which establishes a two-step analysis in determining whether to rescind or amend prior orders. *See Application of 610 Hauling*, 2014 Pa. PUC LEXIS 582, Docket No. A-2012-2334103 (Order entered November 13, 2014). First, the Commission determines whether a party has offered new and novel arguments, or identified considerations that appear to have been overlooked or not addressed in a previous order. *Application of 610 Hauling*, 2014 Pa. PUC LEXIS 582 at 7. The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to exercise discretion to modify the previous Commission order. *Id.* at 8.

III. ARGUMENT

The information that Respondent provides in its Petition, is undoubtedly new, since Respondent failed to answer every prior pleading in this matter. However, in its Petition, Respondent fails to make any specific denial or argument regarding its failure to pay its assessment to the Commission for the July 1, 2010 to June 30, 2011 Fiscal Year, which is almost five (5) years past due, and Respondent fails to make any clear connection between the new information it provides in its Petition to its failure to pay its assessment to the Commission for the July 1, 2010 to June 30, 2011 Fiscal Year. Additionally, Respondent's Petition is completely devoid of any explanation as to why it failed to file an Answer to I&E's Complaint and Motion for Default Judgment. Respondent's Petition also fails to ask for reconsideration, modification, or rescission of the Commission's June 11, 2015 Order.

In its Petition, Respondent states that it cancelled its authority with the Commission "after the government deregulation of transportation companies." As referenced in I&E's Complaint, on or about March 17, 1977, the Commission issued to Respondent a Certificate of Public Convenience at Docket No. A-00099908 for truck, scheduled route, and group and party 16 or greater authority. By Secretarial letter dated July 9, 2010 and docketed at A-2010-2184922 (hereinafter referred to as July 9, 2010 Secretarial Letter), the Commission notified Respondent that its group and party 16 or greater authority with the Commission had been cancelled pursuant to Respondent's request. *See* July 9, 2010 Secretarial Letter attached as Attachment 1. However, the July

9, 2010 Secretarial Letter specifically advised Respondent that it “**does** hold other active authority” with the Commission.

Pursuant to the July 9, 2010 Secretarial Letter, Respondent was put on notice of its other active authority that it holds with the Commission, but Respondent took no action to cancel its truck and scheduled route authority. Even if Respondent’s truck and scheduled route authority with the Commission had been cancelled along with its group and party 16 or greater authority pursuant to the July 9, 2010 Secretarial Letter, such cancellation does not relieve Respondent of its obligation to pay its assessment to the Commission for the July 1, 2010 to June 30, 2011 Fiscal Year in accordance with 66 Pa.C.S. § 510(c). As referenced in I&E’s Complaint, Respondent’s assessment for the July 1, 2010 to June 30, 2011 Fiscal Year was based, in part, on Respondent’s estimated revenues for the 2009 calendar year, since Respondent failed to file an assessment report with the Commission for the 2009 calendar year. Respondent clearly held active authority with the Commission during the 2009 calendar year and was subject to the Commission’s regulation as Respondent’s group and party 16 or greater authority with the Commission was not cancelled until July 9, 2010.

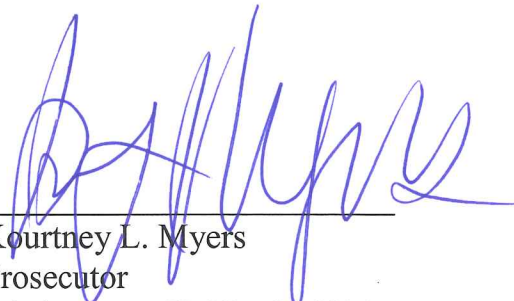
Additionally, as the Commission is funded through assessments, it is the Commission’s policy that all assessments are to be paid on time. Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c), is indicative of the legislative intent that the full amount of the assessment be paid on a timely basis in order to facilitate the Commission in the execution of its duties. Thus, enforcing the requirement to pay assessments pursuant to 66 Pa.C.S. § 510(c) is necessary.

I&E respectfully submits that Respondent had numerous opportunities to pay its outstanding assessment balance to the Commission prior to and during this proceeding. However, Respondent ignored this case until the Commission's June 11, 2015 Order. Therefore, I&E asserts that Respondent has not met the high standard for rescinding or amending the Commission's Order.

IV. CONCLUSION

For all the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Commission deny the "Petition for Rescission" of Bill Rohrbaugh's Charter Service Inc.

Respectfully submitted,



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

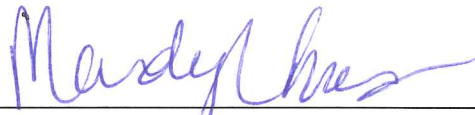
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.705.4366
komyers@pa.gov

Date: July 31, 2015

VERIFICATION

I, Mandy Freas, Accountant, Bureau of Administrative Services, Assessment Section, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: July 31, 2015



Mandy Freas, Accountant
Assessment Section
Bureau of Administrative Services
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ATTACHMENT 1



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

IN REPLY PLEASE
REFER TO OUR
FILE
A-2010-2184922
A-00099908

July 9, 2010

**BILL ROHRBAUGHS CHARTER BUS
121 N RUTH AVE
SPRING GROVE PA 17362**

**Cancellation of Certificate of Public Convenience
Bill Rohrbaugh's Charter Bus
A-00099908**

To Whom It May Concern:

We have received notification of your intention to abandon/discontinue the common carrier service authorized at **A-00099908**, as required by the Final Decision entered January 11, 1999, at P-00981458, Regulation of Group and Party Carriers (when limited to the operation of vehicles with seating capacities of more than fifteen [15] passengers, including the driver).

YOU ARE ADVISED: That the certificate(s) issued at **A-00099908**, be and is canceled, and all rights, powers and privileges granted thereby shall forthwith cease and terminate. Carrier **does** hold other active authority.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary


RC: jrw

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 *et seq.* (relating to service by a party).

Service by First Class Mail:

Bill Rohrbaugh, President
Bill Rohrbaugh's Charter Service Inc.
121 North Ruth Avenue
Spring Grove, PA 17362



Kourtney L. Myers
Prosecutor
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 705-4366

Dated: July 31, 2015