**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held August 20, 2015 |
| Commissioners Present:  Gladys M. Brown, Chairman  John F. Coleman, Jr., Vice Chairman  James H. Cawley  Pamela A. Witmer  Robert F. Powelson |  |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v.  John C. Delauter t/a Delauter’s A-1 Services | C-2014-2431917 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion for Default Judgment (Motion), filed by the Commission’s Bureau of Investigation and Enforcement (I&E) on October 29, 2015, relative to the above-captioned proceeding. No Answers to the Motion have been filed. For the reasons stated below, we shall grant the Motion, in part, and sustain the Complaint, in part.

**Procedural History**

John C. Delauter t/a Delauter’s A-1 Services (Respondent) was issued a Certificate of Public Convenience (Certificate) on August 16, 2007, at Docket No. A‑00121541, for household goods carrier authority and truck authority.

On July 15, 2014, I&E filed the above-captioned Complaint. Also, on July 15, 2014, the Secretary’s Bureau served the Complaint on the Respondent by certified mail. On July 16, 2014, the Respondent signed a receipt, confirming that it received the Complaint. Motion at 1. A copy of proof of delivery of the Complaint is attached to the Motion.

In the Complaint, I&E alleged that the Respondent violated Section 510(b) of the Public Utility Code (Code), 66 Pa. C.S. § 510(b), by failing to file assessment reports demonstrating its gross intrastate operating revenue for the 2011 and 2012 calendar years. I&E recommended a civil penalty of $2,000 for this violation. In addition, I&E alleged that the Respondent violated Section 510(c) of the Code, 66 Pa. C.S. § 510(c), by failing to pay the Commission’s assessment of $129 for the July 1, 2012 to June 30, 2013 Fiscal Year. I&E recommended a civil penalty of $19 for this violation.[[1]](#footnote-1) Complaint at 4-5.

I&E requested that the Respondent be ordered to pay a total of $2,148, consisting of the outstanding assessment balance of $129 and a civil penalty of $2,019 for the alleged violations. I&E also requested that, if the Respondent did not pay the civil penalty and the assessment, the Commission issue an Order cancelling the Respondent’s Certificate. *Id*. at 6.

A Notice was attached to the Complaint and informed the Respondent that it must file an Answer within twenty days of the date of service of the Complaint. The Notice also informed the Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

On July 16, 2014, the Respondent signed a receipt confirming that it received the Complaint. The twenty days to file an Answer to the Complaint expired on August 5, 2014. No Answer to the Complaint was filed.

As stated above, I&E filed its Motion on October 29, 2014. Answers to the Motion have not been filed.

On January 12, 2015, the Respondent paid the outstanding assessment amount of $129.

**Discussion**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

In its Motion, I&E states that the twenty-day time frame for filing an Answer to the Complaint has expired and the Respondent did not file an Answer. I&E also states that the Respondent did not pay its outstanding assessment balance of $129, and the civil penalty of $2,019, that was requested in the Complaint. Motion at 2. Accordingly, I&E requests that the Commission enter a Default Order against the Respondent that: (1) directs the Respondent to pay its outstanding assessment and civil penalty within thirty days of the entry date of this Opinion and Order, and (2) directs the Bureau of Technical Utility Services to cancel the Respondent’s Certificate if the past-due assessments and civil penalty are not timely paid. *Id*.

Based on our review of the record and the averments in I&E’s Motion, we shall grant the Motion, in part. Pursuant to Section 5.61(c) of our Regulations, 52 Pa. Code § 5.61(c), a Respondent who fails to file an Answer within the twenty-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. The Commonwealth Court has upheld our authority to sustain complaints that are not answered within twenty days. *See*, *Fusaro v. Pa. PUC*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978). In this case, the Respondent signed a receipt on July 16, 2014, confirming that it received the Complaint sent by certified mail. Thus, the Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond and to request a hearing. The Respondent was also clearly advised that, if it did not file an Answer within twenty days, then I&E would request that we issue an Order imposing the penalties set forth in the Complaint.

On or about August 27, 2012, the Commission sent the Respondent an assessment invoice for Fiscal Year 2012-2013. On January 12, 2015, the Respondent paid the outstanding assessment amount of $129. Therefore, the Respondent failed to fully pay the assessment invoice until over two years later, and only after I&E filed the Complaint and Motion. The failure to timely pay this invoice constituted a violation of the Code and justified an appropriate civil penalty. Utilities are expected to pay their assessments in a timely manner because the operation of the Commission, including oversight of safety considerations present in the regulation of each utility, depends upon it. *Pa. PUC v. Scott A. Dechert t/a Distinctive Limousine Service,* Docket No. C‑2012‑2334904 (Order entered October 17, 2013). In the instant case, we find that the Respondent’s delay in paying the required assessment was too long to be excused and justifies a civil penalty. Therefore, the civil penalty of $19, or approximately 15% of the outstanding assessment, is appropriate. We note that the Respondent has been ordered to pay a civil penalty twice in the last ten years for performing household goods moves without authority from the Commission. Accordingly, the civil penalty associated with the failure to file assessment reports for the 2011 and 2012 calendar years stands.

Under the circumstances in this case, we find that it is appropriate to sustain the Complaint, in part, and grant the requested relief with the exception of the requested assessment balance of $129, which has since been paid by the Respondent.

**Conclusion**

Based on our review of the record, the averments in the Motion, and the applicable law, we shall grant I&E’s Motion, in part, and sustain the Complaint, in part, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Default Judgment filed by the Bureau of Investigation and Enforcement on October 29, 2014, is granted, in part, consistent with this Opinion and Order.

2. That the allegations in the Bureau of Investigation and Enforcement’s Complaint are deemed admitted, and the Complaint is thereby sustained, in part.

3. That, within thirty days of the entry date of this Opinion and Order, John C. Delauter t/a Delauter’s A-1 Services shall remit $2,019, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA, 17105-3265

4. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. That a copy of this Opinion and Order shall be served upon the Bureau of Technical Utility Services for monitoring of compliance.

6. That, if John C. Delauter t/a Delauter’s A-1 Services fails to make the payment required by Ordering Paragraph No. 3, above, within thirty days of the entry date of this Opinion and Order, it is further ordered:

a. That the Bureau of Technical Utility Services shall cancel the Certificate of Public Convenience held by John C. Delauter t/a Delauter’s A-1 Services, at Docket No. A-00121541, without further action by this Commission;

b. That the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for appropriate action; and

c. That a copy of this Opinion and Order shall be served upon the Pennsylvania Department of Transportation, pursuant to Chapter 13 of the Vehicle Code, 75 Pa. C.S. §§ 1301-1379, and the Commission will request that the Pennsylvania Department of Transportation put an administrative hold on

John C. Delauter t/a Delauter’s A-1 Services’ vehicle registrations. John C. Delauter t/a Delauter’s A-1 Services will not be able to register any new vehicles or renew any existing vehicle registrations until all past due assessments are paid, all past due fines are paid, all insurance filings are up to date, and it holds an active Certificate of Public Convenience issued by this Commission.

7. That, after John C. Delauter t/a Delauter’s A-1 Services remits $2,019 as required by Ordering Paragraph No. 3, the Secretary’s Bureau shall mark this proceeding closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 20, 2015

ORDER ENTERED: August 20, 2015

1. I&E’s recommended $19 civil penalty is approximately 15% of the $129 outstanding assessment amount due. [↑](#footnote-ref-1)