**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

Bureau of Investigation and Enforcement :

 :

 v. : C-2015-2473286

 :

Steven A. Cintron/La Familia, Inc. :

**INitial decision**

Before

Ember S. Jandebeur

Administrative Law Judge

This Initial Decision finds in favor of the Bureau of Investigation and Enforcement and upholds a civil penalty assessed for failure to secure a certificate of public convenience prior to advertising and operating.

 HISTORY OF THE PROCEEDING

On April 27, 2015, the Bureau of Investigation and Enforcement (BI&E) filed a Complaint against Steven A. Cintron/La Familia, Inc. alleging that Steven A. Cintron/La Familia, Inc. was advertising and transporting persons for compensation as a common carrier without holding a certificate of public convenience.

On June 22, 2015, the Respondent filed an answer to the Complaint. The answer averred that it was not using its buses.

On August 28, 2015, a hearing notice was issued setting the initial hearing date for October 21, 2015 at 10:00 a.m., and the matter was assigned to me.

On September 2, 2015, I issued a prehearing order setting forth various procedural rules for the hearing. The hearing convened as scheduled. Steven A. Cintron/La Familia, Inc. appeared without counsel. BI&E was represented by counsel. The record closed on November 12, 2015 with receipt of the transcript. The matter is now ready for decision.

FINDINGS OF FACT

1. The Complainant in this matter is the Commission’s Bureau of Investigation and Enforcement.
2. The Respondent is Steven A. Cintron/La Familia, Inc., a corporation. Tr. at 4.

1. Steven A. Cintron/La Familia, Inc. attended the scheduled hearing unrepresented by counsel.

1. Steven A. Cintron/La Familia, Inc. does not hold a Commission-issued certificate of public convenience. BI&E Exh. 1.
2. Steven A. Cintron/La Familia, Inc. advertises on Craigslist to offer transportation throughout the Wilkes-Barre area. BI&E Exh. 2.
3. Officer Thomas Kepping met with Steven A. Cintron/La Familia, Inc. and explained that transporting passengers for compensation requires a certificate of public convenience. BI&E Exh. 3.
4. Steven A. Cintron/La Familia, Inc. applied for a certificate of public convenience, was notified of the need for insurance forms and a copy of the incorporation papers, and never completed the application process. BI&E Exhs. 4a and 4b.
5. Steven A. Cintron/La Familia, Inc. has two prior complaints for the same infraction, i.e., operating without a certificate of public convenience. In both instances, a civil penalty was assessed. It is not clear in the record if the civil penalties were ever paid. BI&E Exhs. 5a and 6.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 134 Pa.Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den*., 602 A.2d 863 (1992). That is, a party must present evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm’n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982), *Edan Transportation Corp. v. Pa. Pub. Util. Comm’n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993), 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established*. Norfolk and Western Ry. v. Pa. Pub.Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep’t of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

In this proceeding, the Respondent failed to attend the scheduled hearing with counsel despite being put on notice twice of the need for a corporation to be represented by counsel. The Respondent was notified of the need for counsel on the second page of the hearing notice dated August 28, 2015 where it plainly stated:

“Individuals representing themselves are not required to be represented by an attorney. All others (corporation, partnership, association, trust or government agency or subdivision) must be represented by an attorney.” (Emphasis in the original).

The Respondent was notified a second time on the September 2, 2015 Prehearing Order at paragraph 4 which stated:

“Pursuant to 52 Pa.Code §§ 1.21 and 1.22, you may represent yourself, if you are an individual…However, if you are a partnership, limited liability company, corporation, trust, association…you must have an attorney…” 52 Pa. Code §§ 1.21, 1.22.

BI&E moved for sanction against Steven A. Cintron/La Familia, Inc. in the form of not allowing Steven A. Cintron/La Familia, Inc. to testify at the hearing. Pursuant to 52 Pa.Code §§ 1.21 and 1.22, Steven A. Cintron/La Familia, Inc. cannot proceed without counsel, therefore, the motion was granted and the hearing was held. By regulation, Steven A. Cintron/La Familia, Inc. was not allowed to testify. 52 Pa.Code §§ 1.21 and 1.22.

Section 1101 of the Public Utility Code states that upon application and approval it shall be lawful for a public utility to offer service. 66 Pa.C.S. § 1101. Providing transportation for passengers as a common carrier is defined as a public utility. 66 Pa.C.S. § 102.

BI&E met its burden of proof by showing that Steven A. Cintron/La Familia, Inc. was advertising on Craigslist to provide transportation for compensation without a certificate of public convenience. Steven A. Cintron/La Familia, Inc. is subject to the BI&E’s assessment of a $1,000 civil penalty.

“If any public utility, or any other person or corporation subject to this part shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited, or shall fail, omit, neglect or refuse to perform any duty enjoined upon it by this part…shall forfeit and pay to the Commonwealth a sum not exceeding $1000….” 66 Pa.C.S. § 3301.

Commission standards for the application of a civil penalty were addressed in *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc. and Sprint Communications Company, L.P*., Docket No. C-00992409 (Order entered March 16, 2000). The Commission uses the standards developed in *Rosi* as a basis to develop the amount of civil penalties in cases regarding other utility issues. *Pa. Pub. Util. Comm’n v. NCIC Operator Services*, Docket No. M-00001440 (Order entered December 21, 2000). See also 52 Pa. Code § 69.1201.

The first standard to be considered is whether the violations were intentional or negligent. If the violation was intentional, the Commission will start with the presumption that the penalty will be in the range of $500 to $1,000 per day. If, on the other hand, the violation is negligent, the Commission will start with the presumption that the penalty will be in the range of $0 to $500 per day. This first standard is generic in nature and can be applied to any utility type. Steven A Cintron/LaFamilia, Inc.’s violation is intentional and repetitive[[1]](#footnote-1); therefore the assessment of a $1000 penalty is appropriate.

The next two standards are phrased in *Rosi* to address the issue of slamming; however, they may be used in other utility penalty cases beyond those involving slamming. The second *Rosi* standard addressed the promptness with which the utility took steps to correct the issue, and the third *Rosi* standard questions whether the utility/Respondent initiated procedures to prevent the violation from occurring again. No evidence was provided by BI&E concerning whether Steven A. Cintron/La Familia, Inc. promptly addressed the issues or instituted changes to its business practices. Whether Steven A. Cintron/La Familia, Inc. develops different business practices to address the violations remains to be seen.

The fourth and fifth *Rosi* standards question the number of customers impacted by the violations, and whether the recommended penalty arises from a settlement or a litigated proceeding. BI&E presented no evidence of impacted customers.

Standards six and seven question the compliance history of the utility, and whether the utility cooperated with the Commission in attempting to correct the problem. BI&E presented evidence of two earlier complaints and civil penalty assessments for the same violation. Compliance with the Public Utility Code is clearly not a priority for Steven A. Cintron/La Familia, Inc. Therefore, under *Rosi*, the penalty assessment of $1,000 remains appropriate.

The eighth and ninth standards consider the amount of a civil penalty necessary to deter future violations and considers past Commission decisions regarding similar issues. A $1,000 civil penalty should deter future violations. However, this Initial Decision will also be forwarded to the Department of Transportation asking that they put an administrative hold on

Steven A. Cintron/La Familia Inc.’s registered vehicles until all assessments are paid.

The tenth *Rosi* standard is other relevant factors. No other relevant factors were raised by BI&E.

In summary, after review of the Rosi factors, the penalty of $1,000 is warranted and appropriate.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701
2. Steven A. Cintron/La Familia, Inc. is a corporation. 52 Pa. Code §§ 1.21, 1.22

1. You may represent yourself, if you are an individual…However, if you are a partnership, limited liability company, corporation, trust, association…you must have an attorney… 52 Pa.Code § 1.21.
2. Pursuant to regulation, Steven A. Cintron/La Familia, Inc. was not allowed to testify due to lack of counsel. 52 Pa.Code § 1.21.

1. The Bureau of Investigation and Enforcement met its burden of proof. 66 Pa.C.S. § 332.
2. Steven A. Cintron/La Familia, Inc. violated Section 1101 of the Public Utility Code by offering transportation for compensation as a common carrier without a certificate of public convenience. 66 Pa.C.S. § 1101.

ORDER

 THEREFORE,

 IT IS ORDERED:

1. That Steven A. Cintron/La Familia, Inc. shall cease and desist from violating the Public Utility Code.

1. That Steven A. Cintron/La Familia, Inc. shall pay a civil penalty in the sum of $1,000 for the violation of 66 Pa.C.S. § 1101.
2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days of receipt of the Commission’s final Opinion and Order, Steven A. Cintron/La Familia, Inc. shall pay a civil penalty in the amount of $1,000. Said check or money order shall be made payable to “Commonwealth of Pennsylvania” and sent to:

 Secretary

 Pennsylvania Public Utility Commission

 P.O. Box 3265

 Harrisburg, PA 17105-3265

1. That the Secretary’s Bureau shall mark this proceeding closed upon payment of the penalty.
2. That the Secretary’s Bureau shall request the Pennsylvania Department of Transportation to put an administrative hold on Steven A. Cintron/La Familia, Inc.’s vehicle registrations until the civil penalty has been paid. 75 Pa.C.S. § 1375.

Date: December 18, 2015 /s/

 Ember S. Jandebeur

 Administrative Law Judge

1. The advertisements were intentional, and there are two prior complaints for the same activity. [↑](#footnote-ref-1)